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BUREAU OF CONSUMER FINANCIAL PROTECTION

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RIN 3170–AA06

Finalization of Interim Final Rules (Subject to Any Intervening Amendments) Under Consumer Financial Protection Laws

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official interpretations.

SUMMARY: Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) transferred rulemaking authority for a number of consumer financial protection laws from seven Federal agencies to the Bureau of Consumer Financial Protection (Bureau) as of July 21, 2011. In December 2011, the Bureau republished the existing regulations implementing those laws, as previously adopted by the seven predecessor agencies, as interim final rules (December 2011 IFRs) with technical and conforming changes to reflect the transfer of authority and certain other changes made by the Dodd-Frank Act. The December 2011 IFRs did not impose any new substantive obligations on persons subject to the existing regulations. This final rule adopts the December 2011 IFRs as final, subject to any intervening final rules published by the Bureau.

DATES: This final rule is effective April 28, 2016.

FOR FURTHER INFORMATION CONTACT: Kristen Phinnessee, Counsel, Office of Regulations, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Background and Summary of the Final Rule

In response to an unprecedented cycle of expansion and contraction in the mortgage market that sparked the most severe U.S. recession since the Great Depression, Congress passed the Dodd-Frank Act, which was signed into law on July 21, 2010. In the Dodd-Frank Act, Congress established the Bureau and generally consolidated the rulemaking authority for Federal consumer financial laws in the Bureau.[1] Title X of the Dodd-Frank Act transferred rulemaking authority for a number of consumer financial protection laws from seven Federal agencies to the Bureau as of July 21, 2011. These included the Consumer Leasing Act (CLA), the Electronic Fund Transfer Act (except with respect to section 920) (EFTA), the Equal Credit Opportunity Act (ECOA), the Fair Credit Reporting Act (except with respect to sections 615(e) and 628) (FCRA), the Fair Debt Collection Practices Act (FDCPA), Subsections (b) through (f) of section 43 of the Federal Deposit Insurance Act (FDIA), sections 502 through 509 of the Gramm-Leach-Bliley Act (except for section 505 as it applies to section 501(b)) (GLBA), the Home Mortgage Disclosure Act (HMDA), the Real Estate Settlement Procedures Act of 1974 (RESPA), the S.A.F.E. Mortgage Licensing Act of 2008 (SAFE), the Truth in Lending Act (TILA), the Truth in Savings Act (TISA), section 626 of the Omnibus Appropriations Act, 2009 (MAP and MARS), and the Interstate Land Sales Full Disclosure Act (ILSA) (together, the 14 Acts).

From December 16–27, 2011, the Bureau republished in the **Federal Register** the regulations implementing the 14 Acts as new parts of title 12 of the Code of Federal Regulations, through interim final rules, with only certain technical and conforming changes to reflect the transfer of authority and certain other changes made by the Dodd-Frank Act (the December 2011 IFRs). The December 2011 IFRs did not impose any new substantive obligations on persons subject to the existing regulations. The final rule adopts the December 2011 IFRs with no changes, subject to any intervening final rules published by the Bureau.

II. Summary of the Rulemaking Process

On December 16, 19–22, and 27, 2011, the Bureau published in the **Federal Register** its interim final rules adopting certain regulations implementing a number of consumer financial protection laws transferred to the Bureau by title X of the Dodd-Frank Act.[2] The comment periods closed on various dates from February 14–27, 2012. In response to the December 2011 IFRs, the Bureau received over 100 comments from consumer groups, creditors, industry trade associations, and others. As discussed in more detail below, the Bureau has considered these comments in adopting this final rule.

III. Legal Authority

The Bureau is issuing this final rule pursuant to its authority under the 14 Acts and the Dodd-Frank Act. Effective July 21, 2011, section 1061 of the Dodd-Frank Act transferred to the Bureau the "consumer financial protection functions" previously vested in certain other Federal agencies. The term "consumer financial protection functions" is defined to include "all authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law, including performing appropriate functions to promulgate and review such rules, orders, and guidelines."[3] The 14 Acts are all Federal consumer financial laws.[4] Accordingly, effective July 21, 2011, except with respect to persons excluded from the Bureau's rulemaking authority by section 1029 of the Dodd-Frank Act, the authority to issue regulations pursuant to the 14 Acts transferred to the Bureau.[5]

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[1] *See, e.g.,* sections 1011 and 1021 of the Dodd-Frank Act, 12 U.S.C. 5491 and 5511 (establishing and setting forth the purpose, objectives, and functions of the Bureau); section 1061 of the Dodd-Frank Act, 12 U.S.C. 5581 (consolidating certain rulemaking authority for Federal consumer financial laws in the Bureau).

[2] 76 FR 78121 (Dec. 16, 2011), 76 FR 78126 (Dec. 16, 2011), 76 FR 78130 (Dec. 16, 2011), 76 FR 78465 (Dec. 19, 2011), 76 FR 78483 (Dec. 19, 2011), 76 FR 78500 (Dec. 19, 2011), 76 FR 78978 (Dec. 20, 2011), 76 FR 79025 (Dec. 21, 2011), 76 FR 79276 (Dec. 21, 2011), 76 FR 79308 (Dec. 21, 2011), 76 FR 79442 (Dec. 21, 2011), 76 FR 79486 (Dec. 21, 2011), 76 FR 79768 (Dec. 22, 2011), and 76 FR 81020 (Dec. 27, 2011).

[3] Public Law 111–203, section 1061(a)(1). Effective on the designated transfer date, July 21, 2011, the Bureau was also granted "all powers and duties" vested in each of the Federal agencies, relating to the consumer financial protection functions, on the day before the designated transfer date.

[4] Public Law 111–203, section 1002(14) (defining "Federal consumer financial law" to include the "enumerated consumer laws"); *id.* section 1002(12) (defining "enumerated consumer laws" to include the 14 Acts).

IV. Summary of Comments to the December 2011 Interim Final Rules

As noted above, the Bureau received over 100 comments in response to the issuance of the December 2011 IFRs. The comments generally fall into four broad categories. First, a number of comments discussed possible typographical, grammatical, or similar errors in the underlying regulations as they were originally adopted by the predecessor agencies and then restated by the Bureau. Second, a number of comments discussed the fact that, with the change in codification, existing internet links across a range of Web pages to the original citations in the electronic Code of Federal Regulations would become obsolete. Third, a number of comments asked the Bureau to confirm that it is bound by existing informal advisory opinions issued by predecessor agencies. Fourth, a number of comments urged that the Bureau make various substantive changes to the regulations adopted by the December 2011 IFRs.

The Bureau has considered all of the comments received and has decided to adopt the December 2011 IFRs as final without change, subject to any intervening final rules published by the Bureau. The purpose of this notice is strictly to finalize the December 2011 IFRs; as any potential typographical errors do not change the meaning of the regulations, possible typographical, grammatical, or similar errors in the original regulations may be addressed in subsequent rulemakings. Similarly, substantive changes to the regulations adopted by the December 2011 IFRs have been, and may further be, addressed in subsequent rulemakings. Further, although it is regrettable that existing internet links may have become obsolete because of the changes in codification, the Bureau believes that such issues most likely have been overcome over the approximately four years since the Bureau adopted the December 2011 IFRs by changes made to the old links. In any event, the Bureau was charged by Congress with conducting certain rulemakings, and it was necessary for the Bureau to put in place its own regulations in order to do so.

Lastly, with regard to the treatment of informal advisory opinions issued by predecessor agencies, the Bureau had addressed the issue prior to the December 2011 IFRs. Section 1063(i) of the Dodd-Frank Act required the Bureau to identify the rules and orders that would be transferred to the Bureau from each transferor agency. On July 21, 2011, the Bureau published in the **Federal Register** the identification of enforceable rules and orders.[6] In this notice, the Bureau published a list of rules that will be enforceable by the Bureau and also noted that it "will give due consideration to the application of other written guidance, interpretations, and policy statements issued prior to July 21, 2011, by a transferor agency in light of all relevant factors . . .".[7]

V. Dodd Frank Act Section 1022(b) Analysis

In developing the final rule, the Bureau has considered potential benefits, costs, and impacts.[8] In addition, the Bureau has consulted, or offered to consult with, the prudential regulators, the Securities and Exchange Commission, the Department of Housing and Urban Development, the Federal Housing Finance Agency, the Federal Trade Commission, and the Department of the Treasury, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

This rule adopts the December 2011 IFRs with no changes, subject to any intervening final rules published by the Bureau. The rule will not impose any new substantive obligations on consumers or covered persons and is not expected to have any impact on consumers' access to consumer financial products and services. As a general matter, the final rule does not impose additional reporting, disclosure, or other requirements beyond those previously in existence.

The Bureau has chosen to evaluate the benefits, costs and impacts of the final rule against the current state of the world, which takes into account the current regulatory regime. The Bureau is not aware of any significant benefits or costs to consumers or covered persons associated with the final rule relative to the baseline. Because the final rule adopts no changes to any of the subject regulations, which are already in place as a consequence of the December 2011 IFRs, there is no practical impact on consumers or covered persons.

The final rules will have no unique impact on depository institutions or credit unions with $10 billion or less in assets as described in section 1026(a) of the Dodd-Frank Act. Also, the final rules will have no unique impact on rural consumers.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations.[9] The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[10] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[11]

The IRFA and FRFA requirements described above apply only where a notice of proposed rulemaking is required,[12] and the panel requirement applies only when a rulemaking requires an IRFA.[13] The Bureau concluded that a notice of proposed rulemaking was not required for the December 2011 IFRs. This final rule adopts the December 2011 IFRs as final, except to the extent they have been amended in subsequent rulemakings. Therefore, a FRFA is not required.

VII. Paperwork Reduction Act

According to the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C.

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[5] *See also* 15 U.S.C. 1691b; 12 U.S.C. 2804; 15 U.S.C. 1693b; 15 U.S.C. 1692l; 12 U.S.C. 5106–5108; 12 U.S.C. 1831t(c), 1831t(d); 15 U.S.C. 1718; 15 U.S.C. 1667f; Public Law 111–8, section 626, 123 Stat. 524, as amended by Public Law 111–24, section 511, 123 Stat. 1734; 15 U.S.C. 6804(a)(1)(A); 15 U.S.C. 1681s(e); 12 U.S.C. 2603–2605, 2607, 2609, 2617; 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1604(a); 12 U.S.C. 4308.

[6] 76 FR 43569 (July 21, 2011).

[7] *Id.*, at 43570.

[8] Section 1022(b)(2)(A) of the Dodd-Frank Act requires the Bureau to consider the potential benefits and costs of regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas. Section 1022(b)(2)(B) requires that the Bureau "consult with the appropriate prudential regulators or other Federal agencies prior to proposing a rule and during the comment process regarding consistency with prudential, market, or systemic objectives administered by such agencies."

[9] 5 U.S.C. 601–612.

[10] 5 U.S.C. 603, 604.

[11] 5 U.S.C. 609.

[12] 5 U.S.C. 603(a), 604(a); 5 U.S.C. 553(b).

[13] 5 U.S.C. 609(b).

3501, *et seq.*) the Bureau may not conduct or sponsor and, notwithstanding any other provision of law, a respondent is not required to respond to an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. This rule contains no new or revised information collection requirements. The Bureau's OMB control numbers for the information collections in the respective existing regulations are as follows:

Regulation	OMB Control No.
Regulation B	3170–0013.
Regulation C	3170–0008.
Regulation E	3170–0014.
Regulation F	3170–0056.
Regulations G & H.	Regulation G: 3170–0005. Regulation H: Not applicable.[14]
Regulation I	3170–0062.
Regulations J, K, & L.	3170–0012.
Regulation M	3170–0006.
Regulation N	3170–0009.
Regulation O	3170–0007.
Regulation P	3170–0010.
Regulation V	3170–0002.
Regulation X	3170–0016.
Regulation Z	3170–0015.
Regulation DD	3170–0004.

List of Subjects

12 CFR Part 1002

Aged, Banking, Banks, Civil rights, Consumer protection, Credit, Credit unions, Discrimination, Fair lending, Marital status discrimination, National banks, National origin discrimination, Penalties, Race discrimination, Religious discrimination, Reporting and recordkeeping requirements, Savings associations, Sex discrimination.

12 CFR Part 1003

Banking, Banks, Credit unions, Mortgages, National banks, Savings associations, Reporting and recordkeeping requirements.

12 CFR Part 1005

Automated teller machines, Banking, Banks, Consumer protection, Credit unions, Electronic fund transfers, National banks, Remittance transfers, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 1006

Administrative practice and procedure, Consumer protection, Credit, Intergovernmental relations.

12 CFR Parts 1007 and 1008

Accounting, Administrative practice and procedure, Advertising, Agriculture, Bank deposit insurance, Banking, Banks, Confidential business information, Conflict of interests, Consumer protection, Credit unions, Crime, Currency, Exports, Foreign banking, Grant programs—housing and community development, Holding companies, Insurance, Investments, Loan programs—housing and community development, Licensing, Mortgages, National banks, Penalties, Registration, Reporting and recordkeeping requirements, Rural areas, Savings associations, Securities, Surety bonds.

12 CFR Part 1009

Credit unions, Depository institutions, Federal Deposit Insurance Act, Federal Trade Commission Act, Federal deposit insurance.

12 CFR Parts 1010, 1011, and 1012

Adjudicatory proceedings, Advertising disclaimers, Certification of substantially equivalent state law, Filing assistance, Land registration, Reporting requirements, Purchasers' revocation rights, Unlawful sales practices.

12 CFR Part 1013

Advertising, Consumer leasing, Reporting and recordkeeping requirements, Truth in lending.

12 CFR Parts 1014 and 1015

Advertising, Business practices related to mortgage loans, Communications, Consumer protection, Credit, Mortgages, Telemarketing, Trade practices.

12 CFR Part 1016

Banking, Banks, Consumer protection, Credit, Credit unions, Foreign banking, Holding companies, National banks, Privacy, Reporting and recordkeeping requirements, Savings associations, Trade practices.

12 CFR Part 1022

Banking, Banks, Consumer protection, Credit unions, Fair Credit Reporting Act, Holding companies, National banks, Privacy, Reporting and recordkeeping requirements, Savings associations, State member banks.

12 CFR Part 1024

Condominiums, Consumer protection, Housing, Insurance, Mortgagees, Mortgages, Mortgage servicing, Reporting and recordkeeping requirements.

12 CFR Part 1026

Advertising, Appraisal, Appraiser, Banking, Banks, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

12 CFR Part 1030

Advertising, Banking, Banks, Consumer protection, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in savings.

Authority and Issuance

For the foregoing reasons, the Bureau adopts as final the December 2011 IFRs, excluding the listed related amendments, as follows:

A. 76 FR 79442 (Dec. 21, 2011), as amended by 78 FR 7216 (Jan. 31, 2013), and 78 FR 60382 (Oct. 1, 2013);

B. 76 FR 78465 (Dec. 19, 2011), as amended by 77 FR 8721 (Feb. 15, 2012), 77 FR 76839 (Dec. 31, 2012), 78 FR 79285 (Dec. 30, 2013), 79 FR 77854 (Dec. 29, 2014), 80 FR 66128 (Oct. 28, 2015), 80 FR 69567 (Nov. 10, 2015), and 80 FR 79673 (Dec. 23, 2015);

C. 76 FR 81020 (Dec. 27, 2011), as amended by 77 FR 6194 (Feb. 7, 2012), 77 FR 40459 (July 10, 2012), 77 FR 50244 (Aug. 20, 2012), 78 FR 6025 (Jan. 29, 2013), 78 FR 18221 (Mar. 26, 2013), 78 FR 30662 (May 22, 2013), 78 FR 49365 (Aug. 14, 2013), and 79 FR 55970 (Sept. 18, 2014);

D. 76 FR 78121 (Dec. 16, 2011);

E. 76 FR 78483 (Dec. 19, 2011);

F. 76 FR 78126 (Dec. 16, 2011);

G. 76 FR 79486 (Dec. 21, 2011), as amended by 77 FR 26154 (May 3, 2012);

H. 76 FR 78500 (Dec. 19, 2011), as amended by 76 FR 81789 (Dec. 29, 2011), 77 FR 69735 (Nov. 21, 2012), 78 FR 70193 (Nov. 25, 2013), 79 FR 56482 (Sept. 22, 2014), and 80 FR 73945 (Nov. 27, 2015);

I. 76 FR 78130 (Dec. 16, 2011);

J. 76 FR 79025 (Dec. 21, 2011), as amended by 79 FR 64057 (Oct. 28, 2014);

K. 76 FR 79308 (Dec. 21, 2011), as amended by 77 FR 67744 (Nov. 14, 2012);

L. 76 FR 78978 (Dec. 20, 2011), as amended by 78 FR 6856 (Jan. 31, 2013), 78 FR 10696 (Feb. 14, 2013), 78 FR 44686 (July 24, 2013), 78 FR 60382 (Oct. 1, 2013), 78 FR 62993 (Oct. 23, 2013), 78 FR 68343 (Nov. 14, 2013), 78 FR 79730 (Dec. 31, 2013), 80 FR 8767 (Feb.19, 2015), 80 FR 22091 (Apr. 21, 2015), 80 FR 43911 (July 24, 2015), 80 FR 80228 (Dec. 24, 2015), and 81 FR 7032 (Feb. 10, 2016);

M. 76 FR 79768 (Dec. 22, 2011), as amended by 77 FR 69736 (Nov. 21,

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[14] Regulation H contains no information collections requiring approval under the PRA.

2012), 77 FR 69738 (Nov. 21, 2012), 77 FR 70105 (Nov. 23, 2012), 78 FR 4726 (Jan. 22, 2013), 78 FR 6408 (Jan. 30, 2013), 78 FR 6856 (Jan. 31, 2013), 78 FR 10368 (Feb. 13, 2013), 78 FR 10902 (Feb. 14, 2013), 78 FR 11280 (Feb. 15, 2013), 78 FR 18795 (Mar. 28, 2013), 78 FR 25818 (May 3, 2013), 78 FR 30739 (May 23, 2013), 78 FR 32547 (May 31, 2013), 78 FR 35430 (June 12, 2013), 78 FR 44686 (July 24, 2013), 78 FR 45842 (July 30, 2013), 78 FR 60382 (Oct. 1, 2013), 78 FR 62993 (Oct. 23, 2013), 78 FR 70194 (Nov. 25, 2013), 78 FR 76033 (Dec. 16, 2013), 78 FR 78520 (Dec. 26, 2013), 78 FR 79286 (Dec. 30, 2013), 78 FR 79730 (Dec. 31, 2013), 79 FR 41631 (July 17, 2014), 79 FR 48015 (Aug. 15, 2014), 79 FR 56483 (Sept. 22, 2014), 79 FR 65300 (Nov. 3, 2014), 79 FR 77855 (Dec. 29, 2014), 79 FR 78296 (Dec. 30, 2014), 80 FR 8767 (Feb. 19, 2015), 80 FR 21153 (Apr. 17, 2015), 80 FR 22091 (Apr. 21, 2015), 80 FR 32658 (June 9, 2015), 80 FR 43911 (July 24, 2015), 80 FR 56895 (Sept. 21, 2015), 80 FR 59944 (Oct. 2, 2015), 80 FR 73943 (Nov. 27, 2015), 80 FR 73947 (Nov. 27, 2015), 80 FR 79674 (Dec. 23, 2015), 80 FR 80228 (Dec. 24, 2015), 81 FR 7032 (Feb. 10, 2016), and 81 FR 16074 (Mar. 25, 2016); and N. 76 FR 79276 (Dec. 21, 2011).

Dated: April 12, 2016.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2016–09431 Filed 4–27–16; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–3773; Airspace Docket No. 15–ANM–22]

Amendment of Class E Airspace; Deer Lodge MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, correction.

SUMMARY: This action corrects a final rule published in the **Federal Register** of March 29, 2016, amending Class E airspace extending upward from 700 feet above the surface at Deer Lodge-City-County Airport, Deer Lodge, MT. The FAA identified that the Class E airspace area extending upward from 1,200 feet above the surface was omitted from the Class E airspace description for the airport.

DATES: Effective 0901 UTC, May 26, 2016. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Richard Roberts, Operations Support Group, Western Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (425) 203–4517.

SUPPLEMENTARY INFORMATION:

History

The FAA published a final rule in the **Federal Register** amending Class E Airspace extending upward from 700 feet above the surface at Deer Lodge-City-County Airport, Deer Lodge, MT. (81 FR 17377, March 29, 2016) Docket No. FAA–2015–3773. Subsequent to publication, the Aeronautical Information Services branch identified that the Class E airspace extending upward from 1,200 feet above the surface was inadvertently left out of the regulatory text describing the boundary for the airport. This action reestablishes the airspace extending upward from 1,200 feet above the surface as part of that description.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. Availability information for FAA Order 7400.9Z can be found in the original final rule (81 FR 17377, March 29, 2016). FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, in the **Federal Register** of March 29, 2016 (81 FR 17377) FR Doc. 2016–06934, Amendment of Class E Airspace; Deer Lodge, MT, is corrected as follows:

§ 71.1 [Amended]

ANM MT E5 Deer Lodge, MT [Corrected]

On page 17378, column 3, after line 48, add the following text:

"That airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 46°41′00″ N., long. 114°08′00″ W.; to lat. 47°03′00″ N., long. 113°33′00″ W.; to lat. 46°28′00″ N., long. 112°15′00″ W.; to lat. 45°41′00″ N., long. 112°13′00″ W.; to lat. 45°44′00″ N., long. 113°03′00″ W.; thence to the point of origin."

Issued in Seattle, Washington, on April 18, 2016.

Tracey Johnson,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2016–09699 Filed 4–27–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. FDA–2011–N–0143]

RIN 0910–AG64

Foreign Supplier Verification Programs for Importers of Food for Humans and Animals; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending a final rule published in the **Federal Register** of November 27, 2015. That final rule established requirements for importers to verify that food they import into the United States is produced consistent with the hazard analysis and risk-based preventive controls and standards for produce safety provisions of the Federal Food, Drug, and Cosmetic Act (the FD&C Act), is not adulterated, and is not misbranded with respect to food allergen labeling. The final rule published with some editorial and inadvertent errors. This document corrects those errors.

DATES: Effective April 28, 2016.

FOR FURTHER INFORMATION CONTACT: Brian Pendleton, Office of Policy, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–4614, email: *brian.pendleton@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 27, 2015 (80 FR 74226), FDA published the final rule "Foreign Supplier Verification Programs for Importers of Food for Humans and Animals" with some editorial and inadvertent errors. We are taking this action to correct inadvertent errors in the preamble to the final rule and to improve the accuracy of the provisions added to the Code of Federal Regulations.

1. On page 74271, in the second paragraph of section III.E.5, in the discussion of allowing importers to obtain certain information needed to meet their FSVP requirements from other entities as described in certain sections of the document, the reference to "sections III.E.5, III.F.4, and III.G.4" is corrected to read "sections III.A.7, III.F.4, and III.G.4".

2. On page 74332, in the third column, in the second "bullet" point in Response 334, "For the importation of food from a supplier that is subject to the preventive controls regulations for human food or animal food or the produce safety regulation, 6 months after the foreign supplier of the food is required to comply with the relevant regulations;" is corrected to read "For the importation of food from a supplier that is subject to the preventive controls regulation for human food, the preventive controls or CGMP requirements in the preventive controls regulation for animal food, or the produce safety regulation, 6 months after the foreign supplier of the food is required to comply with the relevant regulations;".

List of Subjects in 21 CFR Part 1

Cosmetics, Drugs, Exports, Food labeling, Imports, Labeling, Reporting and recordkeeping requirements.

PART 1—GENERAL ENFORCEMENT REGULATIONS

■ 1. The authority citation for 21 CFR part 1 continues to read as follows:

Authority: 15 U.S.C. 1333, 1453, 1454, 1455, 4402; 19 U.S.C. 1490, 1491; 21 U.S.C. 321, 331, 332, 333, 334, 335a, 343, 350c, 350d, 350j, 352, 355, 360b, 360ccc, 360ccc–1, 360ccc–2, 362, 371, 374, 381, 382, 384a, 384b, 384d, 387, 387a, 387c, 393; 42 U.S.C. 216, 241, 243, 262, 264, 271.

■ 2. Amend § 1.500 by revising the definitions of "Environmental pathogen", "Harvesting", and "Manufacturing/processing" to read as follows:

§ 1.500 What definitions apply to this subpart?

* * * * *

Environmental pathogen means a pathogen capable of surviving and persisting within the manufacturing, processing, packing, or holding environment such that food may be contaminated and may result in foodborne illness if that food is consumed without treatment to significantly minimize the environmental pathogen. Examples of environmental pathogens for the purposes of this part include *Listeria monocytogenes* and *Salmonella* spp. but do not include the spores of pathogenic sporeforming bacteria.

* * * * *

Harvesting applies to applies to farms and farm mixed-type facilities and means activities that are traditionally performed on farms for the purpose of removing raw agricultural commodities from the place they were grown or raised and preparing them for use as food. Harvesting is limited to activities performed on raw agricultural commodities, or on processed foods created by drying/dehydrating a raw agricultural commodity without additional manufacturing/processing, on a farm. Harvesting does not include activities that transform a raw agricultural commodity into a processed food as defined in section 201(gg) of the Federal Food, Drug, and Cosmetic Act. Examples of harvesting include cutting (or otherwise separating) the edible portion of the raw agricultural commodity from the crop plant and removing or trimming part of the raw agricultural commodity (*e.g.*, foliage, husks, roots, or stems). Examples of harvesting also include cooling, field coring, filtering, gathering, hulling, shelling, sifting, threshing, trimming of outer leaves of, and washing raw agricultural commodities grown on a farm.

* * * * *

Manufacturing/processing means making food from one or more ingredients, or synthesizing, preparing, treating, modifying, or manipulating food, including food crops or ingredients. Examples of manufacturing/processing activities include: Baking, boiling, bottling, canning, cooking, cooling, cutting, distilling, drying/dehydrating raw agricultural commodities to create a distinct commodity (such as drying/dehydrating grapes to produce raisins), evaporating, eviscerating, extracting juice, extruding (of animal food), formulating, freezing, grinding, homogenizing, irradiating, labeling, milling, mixing, packaging (including modified atmosphere packaging), pasteurizing, peeling, pelleting (of animal food), rendering, treating to manipulate ripening, trimming, washing, or waxing. For farms and farm mixed-type facilities, manufacturing/processing does not include activities that are part of harvesting, packing, or holding.

* * * * *

■ 3. Revise the section heading of § 1.501 to read as follows:

§ 1.501 To what foods do the requirements in this subpart apply?

* * * * *

■ 4. Revise the section heading and the paragraph headings in paragraphs (a) and (b) of § 1.511 to read as follows:

§ 1.511 What FSVP must I have if I am importing a food subject to certain requirements in the dietary supplement current good manufacturing practice regulation?

(a) *Importers subject to certain requirements in the dietary supplement current good manufacturing practice regulation.* * * *

(b) *Importers whose customer is subject to certain requirements in the dietary supplement current good manufacturing practice regulation.* * * *

* * * * *

■ 5. In § 1.512, revise the first sentence of paragraphs (b)(3)(ii) introductory text and (c)(1)(i) and revise paragraphs (b)(3)(iii) and (iv) to read as follows:

§ 1.512 What FSVP may I have if I am a very small importer or I am importing certain food from certain small foreign suppliers?

* * * * *

(b) * * *

(3) * * *

(ii) If your foreign supplier is a qualified facility as defined by § 117.3 or § 507.3 of this chapter and you choose to comply with the requirements in this section, you must obtain written assurance, before importing the food and at least every 2 years thereafter, that the foreign supplier is producing the food in compliance with applicable FDA food safety regulations (or, when applicable, relevant laws and regulations of a country whose food safety system FDA has officially recognized as comparable or determined to be equivalent to that of the United States). * * *

* * * * *

(iii) If your foreign supplier is a farm that grows produce and is not a covered farm under part 112 of this chapter in accordance with § 112.4(a) of this chapter, or in accordance with §§ 112.4(b) and 112.5 of this chapter, and you choose to comply with the requirements in this section, you must obtain written assurance, before importing the produce and at least every 2 years thereafter, that the farm acknowledges that its food is subject to section 402 of the Federal Food, Drug, and Cosmetic Act (or, when applicable, that its food is subject to relevant laws and regulations of a country whose food safety system FDA has officially recognized as comparable or determined to be equivalent to that of the United States).

(iv) If your foreign supplier is a shell egg producer that is not subject to the requirements of part 118 of this chapter because it has fewer than 3,000 laying hens and you choose to comply with the requirements in this section, you must obtain written assurance, before importing the shell eggs and at least every 2 years thereafter, that the shell egg producer acknowledges that its food is subject to section 402 of the Federal Food, Drug, and Cosmetic Act (or, when applicable, that its food is subject to relevant laws and regulations of a country whose food safety system FDA has officially recognized as comparable or determined to be equivalent to that of the United States).

* * * * *

(c) * * *

(1) * * *

(i) Except as specified in paragraph (c)(1)(iii) of this section, in approving your foreign suppliers, you must evaluate the applicable FDA food safety regulations and information relevant to the foreign supplier's compliance with those regulations, including whether the foreign supplier is the subject of an FDA warning letter, import alert, or other FDA compliance action related to food safety, and document the evaluation.

* * *

* * * * *

Dated: April 21, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–09784 Filed 4–27–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

[Docket No. FDA–2016–N–0002]

New Animal Drugs; Approval of New Animal Drug Applications; Changes of Sponsorship; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment; correcting amendments.

SUMMARY: The Food and Drug Administration (FDA) published a document in the **Federal Register** of April 18, 2016 (81 FR 22520), amending the animal drug regulations to reflect application-related actions for new animal drug applications (NADAs) and abbreviated new animal drug applications (ANADAs) during January and February 2016. That rule included two amendatory instructions that cited incorrect sections of 21 CFR part 524.

DATES: *Effective:* April 28, 2016.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–5689, *george.haibel@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In FR Doc. 2016–08827, appearing on page 22520 in the **Federal Register** of Monday, April 18, 2016, the following corrections are made:

On page 22524, in the third column, remove amendatory instructions 35 and 36.

List of Subjects in 21 CFR Part 524

Animal drugs.

Accordingly, 21 CFR part 524 is corrected by making the following correcting amendments:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 524.1193 [Amended]

■ 2. In paragraph (b)(2) of § 524.1193, remove "000859" and in its place add "016592".

§ 524.1484k [Amended]

■ 3. In § 524.1484k, revise the section heading to read: *Neomycin and prednisolone suspension.*

Dated: April 22, 2016.

Tracey Forfa,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 2016–09865 Filed 4–27–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9764]

RIN 1545–BF39

Section 6708 Failure To Maintain List of Advisees With Respect to Reportable Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the penalty under section 6708 of the Internal Revenue Code for failing to make available lists of advisees with respect to reportable transactions. Section 6708 imposes a penalty upon material advisors for failing to make available to the Secretary, upon written request, the list required to be maintained by section 6112 of the Internal Revenue Code within 20 business days after the date of such request. The final regulations primarily affect individuals and entities who are material advisors, as defined in section 6111 of the Internal Revenue Code.

DATES: *Effective Date:* These regulations are effective on April 28, 2016.

Applicability Date: For date of applicability see § 301.6708–1(i).

FOR FURTHER INFORMATION CONTACT: Hilary March, (202) 317–5406 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–2245.

The collection of information in the final regulations is in § 301.6708–1(c)(3)(ii). This information is required for the IRS to determine whether good cause exists to allow a person affected by these regulations an extension of the legislatively established 20-business-day period to furnish a lawfully requested list to the IRS. The collection of information is voluntary to obtain a benefit. The likely respondents are persons (individuals and entities) who qualify as material advisors, as defined in section 6111, who are unable to respond to a valid and statutorily authorized section 6112 list request within the statutory period of time provided by section 6708.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number.

Books and records relating to a collection of information must be retained as long as their contents might become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by section 6103 of the Internal Revenue Code.

Background

This document contains amendments to the Procedure and Administration Regulations (26 CFR part 301) under section 6708 relating to the penalty for failure by a material advisor to maintain and make available a list of advisees with respect to reportable transactions. On March 8, 2013, a notice of proposed rulemaking (REG–160873–04) relating to the penalty under section 6708 was published in the **Federal Register** (78 FR 14939). A public hearing was scheduled for July 2, 2013. The IRS did not receive any requests to testify at the public hearing, and the hearing was cancelled. Two comments were received in response to the notice of proposed rulemaking. After considering the comments, the Treasury Department and the IRS are adopting the proposed regulations as amended by this Treasury decision. The revisions are discussed elsewhere in this document. Additionally, minor, non-substantive edits were made to the proposed regulations to improve clarity.

Summary of Comments and Explanation of Revisions

In response to the notice of proposed rulemaking, the IRS received and considered two comments. Those comments are available for public inspection at *www.regulations.gov* or upon request.

The comments covered ten areas: (1) Delivery of the list request by leaving it at the material advisor's last and usual place of abode or usual place of business; (2) the date the 20-business-day period begins in cases where the list request is mailed to the material advisor; (3) the imposition of the penalty on the day of compliance when the response is untimely; (4) extensions of time for complying with list requests; (5) reasonable cause for failure to furnish lists within the 20-business-day time period in cases where a material advisor's employee violates the material advisor's section 6112 list maintenance procedures; (6) the ordinary business care standard; (7) reliance on an independent tax professional's advice; (8) the accumulation of penalties during the IRS agent's review of an incomplete list where the material advisor fails to establish that it acted in good faith; (9) the examples provided in proposed § 301.6708–1(g) and (h); and (10) administrative review of the imposition of the penalty.

1. Comments Relating to § 301.6708–1(b)

As proposed, § 301.6708–1(b) of the regulations provided that the 20-business-day period within which the material advisor must make the list available shall begin on the first business day after the earliest of the date that the IRS (1) mails a list request by certified or registered mail, (2) hand delivers the written list request, or (3) leaves the written list request at the material advisor's last and usual place of abode or usual place of business.

A. Delivery of the List Request by Leaving It at the Material Advisor's Last and Usual Place of Abode or Usual Place of Business

One commenter recommended deleting proposed § 301.6708–1(b)(3), which allows the IRS to leave the written list request at the material advisor's last and usual place of abode or usual place of business, noting that this method of delivery did not appear in the interim guidance issued by the IRS in Notice 2004–80, 2004–2 C.B. 963. The commenter expressed a concern that the list request may be left with a child or another person who fails to deliver it to the material advisor or that it may be left on a door step and lost or destroyed before being discovered by the material advisor. If such an incident were to occur, the material advisor who did not receive a list request would be in the difficult position of proving that they never received the list request to qualify for reasonable cause. The commenter also compared the list request to a notice of deficiency, which is delivered by certified or registered mail, and to collection due process notices, which may be given in person, left at the dwelling or usual business place of the person to whom the notice is addressed, or sent by registered or certified mail. The commenter stated that a list request is more similar to a notice of deficiency than a collection due process notice because it requires affirmative action.

There is an important way in which a list request under section 6112 is dissimilar to a notice of deficiency. A taxpayer who wishes to challenge the determination in a notice of deficiency must file a petition with the United States Tax Court within 90 days of the notice date (150 days if the taxpayer is located outside of the United States). This time period cannot be altered. By contrast, if the IRS leaves the written list request at the material advisor's usual place of business, but the material advisor does not receive the list request despite the exercise of ordinary business care, the material advisor may, depending on all facts and circumstances, qualify for an extension of the 20-business-day period to furnish the list and may have reasonable cause for failing to timely furnish the list for the days the material advisor was unaware a list request had been made.

The provision allowing for delivery of the list request to the material advisor's usual place of business is necessary to facilitate the delivery of a list request. For example, this provision enables the Service to leave a list request with the administrative assistant of the person required to maintain the list. Further, this provision assists in the delivery of a list request to a material advisor who is attempting to evade delivery of the request.

Nonetheless, in light of the commenter's concerns, the final regulations narrow the scope of § 301.6708–1(b). The final regulations provide that a list request may be left at the material advisor's usual place of business and remove the language regarding leaving the list request at the material advisor's place of abode. The final regulations also provide that a list request can only be left with an individual 18 years of age or older.

B. The Date the 20-Business-Day Period Begins in Cases Where the List Request Is Mailed to the Material Advisor

The commenter also objected that, when the IRS mails the list request, the time to comply is shorter than in cases where the request is hand delivered because under § 301.6708–1(b)(1), the 20-business-day period is calculated from the date of mailing. The commenter also expressed a concern that the material advisor may have no way of determining when the IRS mailed the list request. The commenter suggested that the regulation require the list request to state the date of mailing and suggested that the 20-business-day period for making the list available begin the later of three days after the stated date of mailing or, if the material advisor can establish the date of delivery, the date of actual delivery.

With respect to the commenter's concern that the material advisor may not know the date the IRS mailed the list request, IRS employees requesting lists are expected to date the list request with the date it is mailed. Additionally, the list requests are sent by certified mail and the recipient can use the certified mail number to look up the date of mailing if the envelope containing the list request is not itself postmarked with the date of mailing.

Regarding the rule proposed by the commenter, the statutory text of section 6708 itself provides for imposition of the penalty if the material advisor fails to make the list available upon written request "within 20 business days *after the date of such request.*" (Emphasis added.) Were the regulations to provide for the 20-business-day period to begin three days after the date the letter was mailed, in some circumstances, the material advisor would receive more than 20 business days in which to respond to the list request.

Where the list request is mailed to the material advisor, the IRS has historically interpreted "the date of such request" to refer to the date of mailing. *See* Notice 2004–80, 2004–2 CB 963. This interpretation is reasonable, particularly given the requirement that material advisors maintain the list in a readily accessible form. The 20-business-day period is sufficient to accommodate normal mailing time and to leave sufficient time after receipt, in ordinary circumstances, for a material advisor to produce a list that has been maintained in a readily accessible form. Adopting the rule suggested by the commenter would complicate the rule to accommodate the unusual circumstance in which the amount of time it took for the material advisor to receive the list request made it impossible for the list to be timely furnished. In such a circumstance, however, the material advisor may, considering all facts and circumstances, be eligible for an extension of the 20-business-day period and may, considering all facts and circumstances, have reasonable cause for not providing the list within the 20-business-day period. Accordingly, this comment was not adopted.

2. Comment Relating to § 301.6708–1(e)(1) and (2): The Imposition of the Penalty on the Day of Compliance When the Response Is Untimely

As proposed, the penalty was computed under § 301.6708–1(e)(1) and (2) from the first calendar day after the period for furnishing a list in the form required by section 6112 (either the 20-business-day period following a written list request or the extension period, if extended) until, and including, the day the person's failure ends. One commenter stated that, if the list is furnished after the 20-business-day period, the day that the list is furnished should not be included in the penalty computation. The commenter further explained its interpretation that the language of section 6708(a)(1) providing that the penalty is imposed for "each day of such failure after the 20th day" means that the penalty may not be imposed on the day that the list is furnished to the IRS because on that day there was no failure to respond to the list request.

Section 6708(a)(1) provides:

> If any person who is required to maintain a list under section 6112(a) fails to make such list available upon written request to the Secretary in accordance with section 6112(b) within 20 business days after the date of such request, such person shall pay a penalty of $10,000 for each day of such failure after such 20th day.

The purpose of the section 6708 penalty is to encourage voluntary compliance with the requirement to maintain section 6112 lists and timely provide those lists to the IRS. Penalizing the material advisor on the day of compliance does not significantly promote that purpose. Balancing the purpose of the penalty with the size of this particular penalty warrants adopting the comment in this case. Accordingly, § 301.6708–1(e)(1) of the regulations provides that the day the list was furnished to the IRS will not be included in the calculation of the penalty amount.

3. Comment Relating to § 301.6708–1(c): Manner of and Extensions of Time for Making a List Available

Section 301.6708–1(c)(3) of the regulations permits the IRS, in its discretion, to grant an extension of the 20-business-day period upon a showing of good cause. Under the regulations as proposed, any request for an extension had to, among other requirements, state that to the best of the person's knowledge, all information and records relating to the list under that person's possession, custody, or control have been maintained according to procedures and policies consistent with sections 6001 and 6112.

The proposed regulations contained one example illustrating the application of the § 301.6708–1(c)(3) extension provisions. *See* § 301.6708–1(c)(4). The example concerns a large law firm that is a material advisor and has educated its attorneys about the firm's obligations related to reportable transactions. To ensure compliance, the firm has policies in place, under which one professional will notify the firm's compliance officer about any tax engagement involving a reportable transaction and then direct a subordinate to send the documents required to be maintained under section 6112 to the compliance officer. In compiling its section 6112 list after receiving a request from the IRS, the firm discovers that one of its attorneys, who is no longer with the firm, did not provide the documentation required by the firm's policies with respect to one reportable transaction. Because the firm will have to search for responsive documents in its storage facility and contact clients for information, it will not be able to respond to the list request within 20 business days and requests a 10-day extension. In this example, the IRS grants the 10-day extension with respect to the one transaction at issue.

One commenter suggested that the IRS should also grant an extension where one of the firm's professionals failed to disclose one or more reportable transactions in contravention of established firm policy, and as a result, the firm did not know that it was a material advisor with respect to those transactions. In such a situation, the commenter suggested that the firm would need additional time to locate information. The commenter noted that the example in the proposed regulations does not cover such a situation and suggested that an additional example covering this situation be added to the regulation. To eliminate any confusion regarding the scenario posed by the commenter, an additional example addressing the commenter's concern has been added to § 301.6708–1(c)(4).

The commenter also objected to the requirement that a person requesting an extension of the 20-business-day period must state that, to the best of the person's knowledge, all information and records relating to the list under the person's possession, custody, or control have been maintained in accordance with procedures and policies that are consistent with sections 6001 and 6112. To account for the scenario in which one of a firm's professionals has failed to disclose a reportable transaction in contravention of its policy, the commenter suggested that a person should be able to request an extension under § 301.6708–1(c)(3)(ii) either by making the above statement or by providing "a detailed explanation of the procedures such person has in place to comply with the requirements of section 6112, its efforts to adhere to such procedures, and the reasons why the specific information and records sought in the request were not so maintained."

In some situations warranting an extension, including the scenario described by the commenter and the examples set forth in § 301.6708–1(c)(4), the person requesting the extension will not be able to make the statement required by the proposed regulation. For instance, in example one of § 301.6708–1(c)(4), the firm discovers after receiving the list request that a subordinate did not provide the documentation relating to a reportable transaction to the compliance officer, in contravention of the firm's policy. Accordingly, at the time of the extension request, the firm is aware that the records relating to at least one transaction have not been maintained in accordance with its procedures and policies. The firm, therefore, cannot state that all records relating to the list have been maintained in accordance with its list maintenance procedures and policies, as the proposed regulation required. The final regulation is changed so that material advisors can make the statements required by § 301.6708–1(c)(3)(ii) in order to request an extension even if, after receiving a list request, they discover a failure to comply with their list maintenance procedures, as long as, to the best of their knowledge as of the date of the list request, all information and records relating to the list had been maintained in accordance with procedures and policies consistent with sections 6001 and 6112.

The specific language suggested by the commenter, however, is very broad. Persons who are required to maintain a list under section 6112 are required and expected to maintain the list in a readily accessible form. *See* § 301.6112–1(d). To comply with section 6112, ordinary business care requires a person, upon discovering any failure relating to the list, to take immediate steps to correct the failure. The commenter's suggested language could allow an extension to be obtained by a person who became aware of a failure relating to the list prior to a request for the list, but who has not corrected it or has otherwise not exercised ordinary business care or made a good-faith effort to comply with section 6112 by maintaining the list in a readily accessible form.

Therefore, although the specific language suggested by the commenter was not adopted, § 301.6708–1(c)(3)(ii) has been amended as set forth in the regulatory text of this rule to account for the circumstance identified by the commenter.

In addition, language is added to section 301.6708–1(c)(2) to clarify that making the list available through inspection includes allowing the IRS to copy the list. This is consistent with the underlying requirement to furnish the list under section 6112. *See* section 301.6112–1(e)(1) (providing that each component of the list must be furnished to the IRS in a format that enables the IRS to determine without undue delay or difficulty the information required to be included in the list). This clarification is also consistent with case law concluding that inspecting or examining includes copying documents. *See, e.g., Westside Ford, Inc.* v. *United States,* 206 F.2d 627, 634 (9th Cir. 1953) (holding that the right to inspect documents under 50 U.S.C. 2155(a) includes the right to make copies); *Boren* v. *Tucker,* 239 F.2d 767, 771–72 (9th Cir. 1956) (holding that the right to examine documents under section 7602 includes the right to make copies); *McGarry* v. *Riley,* 363 F.2d 421, 424 (1st Cir. 1966) (holding that a court order enforcing a summons under section 7602 necessarily allowed the Service to make copies, regardless of whether the order specifically allowed copying).

4. Comments Relating to § 301.6708–1(g): Reasonable Cause for Failure To Furnish Lists Within the 20-Business-Day Time Period

Section 6708(a)(2) provides an exception to the penalty for any day in which the failure to furnish the list is due to reasonable cause. Section 301.6708–1(g) describes reasonable cause for purposes of the section 6708 penalty. Reasonable cause is determined on a case-by-case and day-by-day basis, taking into account all the relevant facts and circumstances. Factors considered in determining the existence of reasonable cause include, but are not limited to, good-faith efforts to comply with section 6112, exercise of ordinary business care, supervening events beyond the person's control, and reliance on an independent tax professional's advice. Section 301.6708–1(g) also provides examples illustrating the application of the reasonable cause provisions.

A. Reasonable Cause Where an Employee of the Material Advisor Violates the Material Advisor's Section 6112 List Maintenance Procedures

One commenter stated that the IRS should find reasonable cause where an employee of the material advisor failed to disclose one or more reportable transactions in contravention of the firm's established list maintenance procedures, and as a result, the firm did not know that it was a material advisor with respect to those transactions. The commenter suggested expanding the illustrations of reasonable cause to include this situation.

Similarly, the other commenter was concerned by a lack of clarity as to how the actions of a material advisor's employees, shareholders, partners, or agents would affect the material advisor's reasonable cause claim when the material advisor is a law firm, accounting firm, or similar entity. The commenter noted that, under § 301.6111–3(b)(2)(iii)(A), these individuals are generally not treated as material advisors, and their tax statements are generally attributed to their employers, corporations, partnerships, or principals. The commenter suggested that proposed § 301.6708–1(g)(3) be revised to clarify that a material advisor may still show reasonable cause even if one or more employees of the material advisor did not exercise ordinary business care and would not have reasonable cause, as long as the material advisor had appropriate procedures in place, the failure represents an isolated incident, and the material advisor acted promptly to correct the error upon learning of the employee's non-compliance. The commenter also suggested adding an example to proposed § 301.6708–1(g) similar to that in proposed § 301.6708–1(c)(4), which states that under the given circumstances, a material advisor should be granted an extension despite a former subordinate's failure to comply with its list maintenance policy.

Proposed § 301.6708–1(g)(3) stated that ordinary business care may be established by showing that the material advisor established and adhered to list maintenance procedures reasonably designed and implemented to ensure compliance with section 6112. Proposed section 301.6708–1(g)(3) also stated that, considering all the relevant facts and circumstances, a material advisor may still be able to demonstrate ordinary business care despite an isolated and inadvertent failure related to the list if the material advisor shows that steps were taken to correct any such failure upon discovery. Section 301.6708–1(g)(3) is intended to capture failures that may be caused by the actions of an individual employee, shareholder, partner, or agent of the material advisor when the material advisor is a law firm or other entity. Depending on the facts and circumstances of the particular case, a material advisor in the situations described by the commenters may be able to establish that it exercised ordinary business care and made good-faith efforts to comply with section 6112, and therefore had reasonable cause under the regulations as already proposed. Accordingly, the comment was not adopted to the extent that it recommended modifying proposed § 301.6708–1(g)(3). To respond to the commenter's concerns, however, a new example 5 has been added to § 301.6708–1(h)(3), in which a material advisor is determined to have reasonable cause despite a former employee's failure to comply with its list maintenance procedures.

B. The Ordinary Business Care Standard

As proposed, § 301.6708–1(g)(3) provides, in relevant part: "The exercise of ordinary business care may constitute reasonable cause. To show ordinary business care, the person may, for example, show that it established, and adhered to, procedures reasonably designed and implemented to ensure compliance with the requirements of section 6112." One commenter stated that, absent extraordinary circumstances, establishing and adhering to reasonable compliance procedures should always result in a finding of reasonable cause. The commenter suggested revising the wording of proposed § 301.6708–1(g)(3) to provide that "[t]he exercise of ordinary business care *shall* constitute reasonable cause."

Reasonable cause is determined on a case-by-case and day-by-day basis, taking into account all the relevant facts and circumstances. A material advisor will not be able to establish reasonable cause if the material advisor did not exercise ordinary business care. However, ordinary business care is not the only factor that must be taken into account to determine whether the failure was due to reasonable cause. The wording suggested by the commenter does not acknowledge that the determination of whether a material advisor establishes reasonable cause is based on all relevant facts and circumstances, including not only whether the material advisor exercised ordinary business care in maintaining a readily producible list but also whether the material advisor, upon receiving the list request, tried in good faith to make the list available within the 20-business-day period (or extended period). In fact, the suggested wording would elevate the exercise of ordinary business care above all other facts and circumstances that should be taken into account in determining reasonable cause. Although exercising ordinary business care is important, standing alone, it is not sufficient to demonstrate reasonable cause. Accordingly, this comment was not adopted.

C. Reliance on the Advice of an Independent Tax Professional

Proposed, § 301.6708–1(g)(5) provided in relevant part that a person may rely on the advice of an independent tax professional to establish reasonable cause. One commenter expressed concern that the IRS and courts would interpret this provision in such a way as to presume that a material advisor could not establish reasonable cause if it did not consult with an independent tax professional. The commenter objected to any such presumption on the basis that most material advisors have the necessary background and experience to evaluate their list maintenance obligations without seeking outside advice. The commenter suggested that the proposed regulations be amended to explicitly reject any such presumption.

Under proposed § 301.6708–1(g)(1), the determination of whether a material advisor had reasonable cause is made on a case-by-case and day-by-day basis, taking into account all the relevant facts and circumstances, the most important of which are those that reflect the extent of the person's good-faith efforts to comply with section 6112. Reasonable cause under proposed § 301.6708–1(g)(5) is not conditioned on seeking the advice of an independent tax professional. Rather, that section describes how reliance on an independent tax professional will be taken into account for purposes of determining whether a failure was due to reasonable cause. However, to alleviate the concern and clarify that a material advisor is not required to obtain advice from an independent tax professional to establish reasonable cause, the following sentence has been added to the final regulations under § 301.6708–(g)(5)(i): "Independent tax professional advice is not required to establish reasonable cause, and the failure to obtain advice from an independent tax professional does not preclude a finding of reasonable cause if, based on the totality of all of the relevant facts and circumstances, reasonable cause has been established."

The commenter also suggested supplementing § 301.6708–1(g)(5)(i) with language indicating that reasonable reliance on the advice of an independent tax professional is to be evaluated based on the knowledge and good faith of the individual employee or employees primarily responsible for compliance procedures for the particular transaction at issue, rather than other employees at the firm.

Proposed, § 301.6708–1(g)(5)(i) provided that, to establish reasonable cause, a material advisor's reliance on the advice of an independent tax professional must be reasonable and in good faith, in light of all the other facts and circumstances. While the knowledge and good faith of the individual employees primarily responsible for compliance procedures for the particular transaction is certainly relevant to the determination of whether the material advisor reasonably relied on the advice of an independent tax professional, the knowledge and good faith of those employees' supervisors or other individuals also may be relevant, depending on the specific facts and circumstances. Accordingly, this comment was not adopted.

D. Examples

Proposed section 301.6708–1(g)(6) contains examples illustrating the application of the reasonable cause provisions. *Example 3, Example 5,* and *Example 6* of proposed § 301.6708–1(g)(6) reference a particular technology for saving the data to a CD–ROM, and reference sending the paper documents to an off-site storage facility. The examples have been updated to remove any implication that any particular technology is specifically approved or required under the regulations, or that the regulations require storage of original records in both electronic and paper format. These changes are not intended to change the principles illustrated in by these examples.

5. Comments Relating to § 301.6708–1(h)(2) and (h)(3)

Section 301.6708–1(h)(2) contains special considerations for determining reasonable cause for the period after the material advisor has furnished a list and before the IRS has informed the material advisor of any identified failures in the list. Section 301.6708–1(h)(3) provides examples illustrating the application of this provision. Some of these examples involve situations where the material advisor has omitted information from the list.

A. Period of IRS Review

Proposed section 301.6708–1(h)(2) provided that if the material advisor establishes that it acted in good faith in its efforts to fully comply with the requirements of section 6112, the material advisor will be deemed to have reasonable cause for the days between when the material advisor furnished the list to the IRS and when the IRS informs the material advisor of any identified failures in the list. If the material advisor does not establish that it acted in good faith, the IRS will not consider the time it takes to review a list as a factor in determining whether the material advisor has reasonable cause for that period. One commenter suggested that the penalty should stop accruing once the list has been furnished to the IRS and a specified reasonable review period has passed. The commenter also stated that the penalty should not start accruing again until the IRS has notified the material advisor that the list appears deficient.

Section 301.6708–1(h)(2) was included in the proposed regulations because a material advisor who has acted in good faith and has produced what it believes to be a complete and timely list has no reason to believe that the list is incomplete until the IRS informs that material advisor of any identified failure. Therefore, for a material advisor who acted in good faith, the proposed regulations provide that no penalty is imposed for the time it takes for the IRS to review the list and inform the material advisor of any identified failure, regardless of the length of time it takes the IRS to complete this process.

The rule in proposed § 301.6708–1(h)(2) is more favorable to material advisors who have acted in good faith than the rule suggested by the commenter. Under the commenter's suggestion, a material advisor who furnished the list in good faith does not get the benefit of being deemed to have reasonable cause for the period of IRS review. However, if the commenter's suggestion is adopted, a material advisor who did not furnish a list in good faith would have reasonable cause for at least some of the time that the IRS is reviewing the list regardless of whether the facts and circumstances support reasonable cause. Consequently, the comment was not adopted.

Nevertheless, the Treasury Department and the IRS are sensitive to the commenter's concerns. In addition, it is in the IRS's interest to review lists furnished by material advisors in a timely manner so that information contained on the lists can be used as intended to assist the IRS in identifying taxpayers who participated in abusive and potentially abusive tax shelters. Therefore, the IRS will take reasonable steps to timely review lists and notify material advisors of identified failures in a timely manner.

B. Omissions From the List

In *Example 1* of proposed § 301.6708–1(h)(3), a supervisor within the material advisor organization carefully reviewed the list before furnishing it to the IRS, and in *Example 3* of proposed § 301.6708–1(h)(3), a supervisor within the material advisor organization did not review the list. One commenter suggested that these examples be modified or supplemented to eliminate what the commenter perceived to be an implication that review of a list by a supervisor within the material advisor organization would reasonably be expected to detect omissions from the list and to specify that a material advisor can demonstrate reasonable cause for omitting a transaction or advisee even if a supervisor's review did not identify the omissions. While agreeing that review of the list before submission to the IRS is appropriate, the commenter stated that this review should not be a factor in determining whether a material advisor had reasonable cause.

The commenter also suggested that in many cases in which a material advisor omits a transaction or advisee from a list, the omission may be due to a mistaken application of the reportable transaction rules or an inadvertent failure. The commenter observed that while three of the examples in proposed § 301.6708–1(g) and (h) involve the omission of specific advisees from a list, none of these examples involves a finding that the material advisor had reasonable cause. The commenter suggested adding an example to either proposed subsection (g) or (h) in which the material advisor had reasonable cause for omitting the transaction or advisee from the list.

In looking at all of the facts and circumstances surrounding a material advisor's efforts to comply with section 6112, review of the list by a supervisor or some other person of authority or experience within the material advisor organization before submission of the list to the IRS is merely one factor to be taken into account to determine whether the material advisor has demonstrated reasonable cause. A failure to detect omissions or other failings in the list does not preclude a finding of reasonable cause. That point is already set forth in *Example 1* of proposed § 301.6708–1(h)(3), in which the supervisor's review of the list did not detect that the material advisor had furnished a draft copy of a tax opinion rather than the final document, but under the facts stated in the example, the material advisor was found to have reasonable cause.

However, to eliminate any confusion and to respond to the concerns expressed by the commenter, a new *Example 5* has been added to § 301.6708–1(h)(3), in which the supervisor's review of the list did not detect that the material advisor had omitted a transaction from the list, and under the facts stated in the example, the material advisor was found to have reasonable cause.

6. Comment Relating to Administrative Review

One commenter recommended that the regulations provide for administrative review in IRS Appeals of all issues pertaining to the applicability and amount of the penalty, including whether an extension should have been granted and whether reasonable cause exists, before paying the penalty. There are currently administrative procedures providing material advisors with an opportunity for prepayment review of the penalty by Appeals. *See* IRM 4.32.2.11.7.2. Under those procedures, the material advisor has 30 days from the date of receipt of the notice and demand for payment of the section 6708 penalty to request administrative review by IRS Appeals. A material advisor does not have to pay any portion of the section 6708 penalty as a condition of requesting administrative review. Therefore, because the IRM already provides the material advisor with an opportunity for administrative review of the assessment of the penalty prior to payment, this comment was not adopted.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the collection of information described under the heading "Paperwork Reduction Act" only affects persons who qualify as material advisors as defined in section 6111, who are statutorily required by section 6112 to maintain and furnish the underlying documents and information upon which the collection of information is based, and who are unable to meet the section 6708 statutorily provided period of time for furnishing these documents and information. Moreover, the collection of information is voluntary to receive a benefit and requiring those persons to report the information described above imposes only a minimal burden in time or expense. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. Chapter 6) is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding the final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

Drafting Information

The principal author of these regulations is Hilary March of the Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *
Section 301.6708–1 also issued under 26 U.S.C. 6708 * * *

■ **Par. 2.** Section 301.6708–1 is added to read as follows:

§ 301.6708–1 Failure to maintain lists of advisees with respect to reportable transactions.

(a) *In general.* Any person who is required to maintain a list under section 6112 who, upon written request for the list, fails to make the list available to the Secretary within 20 business days after the date of the request shall be subject to a penalty in the amount of $10,000 for each subsequent calendar day on which the person fails to furnish a list containing the information and in the form required by section 6112 and its corresponding regulations. The penalty will not be imposed on any particular day or days for which the person establishes that the failure to comply on that day is due to reasonable cause.

(b) *Calculation of the 20-business-day period.* The 20-business-day period shall begin on the first business day after the earliest of the date that the IRS—

(1) Mails a request for the list required to be maintained under section 6112(a) by certified or registered mail to the person required to maintain the list;

(2) Hand delivers the written request to the person required to maintain the list; or

(3) Leaves the written request with an individual 18 years old or older at the usual place of business of the person required to maintain the list.

(c) *Making a list available.* (1) A person who is required to maintain a list required by section 6112 may make the list available by mailing or delivering it to the IRS within 20 business days after the date of the list request. Section 7502 and the regulations thereunder shall apply to this section.

(2) A person who is required to maintain a list required by section 6112 may also make the list available to the IRS by making it available for inspection and copying during normal business hours, as provided by section 6112, or by another agreed-upon method, on an agreed-upon date that falls within the 20-business-day period following the list request.

(3) *Extension*—(i) *In general.* Upon a showing of good cause by the person prior to the expiration of the 20-business-day period following a list request, the IRS may, in its discretion, agree to extend the period within which to make all or part of the list available. For purposes of this paragraph, "good cause" is shown if the person establishes that the 20-business-day deadline cannot reasonably be met despite diligent efforts by the person to maintain the materials constituting a list and to make that list available to the IRS in the time and manner required by the Secretary under section 6112.

(ii) *Requesting an extension.* Any request for an extension of the 20-business-day period must be made in writing to the person at the IRS who requested the list. The person requesting an extension must briefly describe the information and documents that comprise the list as required by section 6112; explain the circumstances that would warrant additional time; propose a schedule to complete the production of the list; state that to the best of the person's knowledge, as of the date of the list request, all information and records relating to the list under the person's possession, custody, or control had been maintained in accordance with procedures and policies that are consistent with sections 6001 and 6112 of the Internal Revenue Code; and state that the extension request is not being made to avoid the person's list maintenance obligations imposed by section 6112 and its corresponding regulations. The IRS may, in its discretion, grant the person's extension request in full or in part. The IRS will consider whether granting an extension may impair its ability to make a timely assessment against any of the participants in the transaction associated with the requested list. The IRS will not grant an extension if it determines that a significant reason for the extension request is to delay producing the list. A pending extension request by itself does not constitute reasonable cause for purposes of section 6708.

(4) *Examples.* The following examples illustrate paragraph (c)(3)(i) and (ii) of this section. These examples are intended to illustrate how the facts and circumstances in paragraph (c)(3)(i) and (ii) of this section may apply; in any given case, however, all of the facts and circumstances must be analyzed.

Example 1. (i) Firm A is a large law firm that is a material advisor. Firm A conducts annual sessions to educate its professionals about reportable transactions and the firm's obligations related to those reportable transactions. Firm A instructs its professionals to provide information on tax engagements that involve reportable transactions and to provide the documents required to be maintained under sections 6001 and 6112 to Firm A's compliance officer for list maintenance purposes. Firm A's policy provides that, for each engagement involving a reportable transaction, one firm professional will send an email to the firm's compliance officer about the engagement and then direct a subordinate to send the documents required to be maintained to the firm's compliance officer. Firm A has policies and procedures in place to monitor compliance with these rules and to address non-compliance.

(ii) Firm A receives a request from the IRS for a section 6112 list. In compiling its list to turn over to the IRS during the 20-business-day period following the list request, Firm A discovers that, with respect to one reportable transaction, a subordinate did not provide the documentation required by Firm A's policy. In addition, Firm A experiences difficulty locating the required documents as both the professional and the subordinate who worked on the matter are no longer employed by Firm A, requiring the firm to undertake an extensive search for the information responsive to the list request. Firm A also seeks the information from the firm's clients. Despite these efforts, Firm A reasonably determined that it will not be able to respond timely to the request. Within the 20-business-day period, Firm A notifies the IRS, in writing, of the difficulties it is experiencing and requests an additional 10 business days to locate and produce the information for this one transaction. Within the 20-business-day period, Firm A makes all other required list information available to the IRS, together with a description of the information that is being searched for, all statements required by these regulations, and a proposed schedule to produce the missing information.

(iii) Under these circumstances, Firm A demonstrated that it could not reasonably make the portion of the list relating to the one transaction available within the 20-business-day period and thus qualified for an extension. Firm A had established policies and procedures reasonably designed and implemented to ensure and monitor compliance with the requirements of section 6112 and address non-compliance. Because the facts and circumstances indicate that Firm A made diligent efforts to maintain the materials constituting the list in a readily accessible form and as otherwise required under section 6112, the requested 10-business-day extension with respect to the portion of the list relating to the one transaction where records were not maintained in accordance with the firm's policies and procedures should be granted.

Example 2. (i) Assume the same facts set forth in example one, except that, in the process of compiling the list to comply with the list maintenance request, Firm A first becomes aware that a firm professional did not send an email to the firm's compliance officer about a transaction subject to the list maintenance request and did not direct a subordinate to send to the firm's compliance officer the information required to be maintained with respect to the transaction. Assume further that Firm A had a robust section 6112 compliance monitoring program in place and despite this, the firm did not know that the professional did not follow firm policies and procedures with respect to this transaction. The professional who worked on the matter is no longer employed by Firm A, causing Firm A difficulty in locating the required information and in ascertaining whether the professional in question failed to comply with Firm A's list maintenance policies with respect to any other reportable transactions. Firm A is searching its records to locate information responsive to the list request and to ensure that no other reportable transactions were omitted from the list. Firm A estimates that it will take an additional 20 business days after the 20th business day to retrieve the missing information and provide IRS with the additional information responsive to the list request. Within the 20-business-day period, Firm A notifies the IRS, in writing, of the difficulties it is experiencing and requests an additional 20 business days to locate and produce the information for this one transaction and for any other reportable transactions omitted from the list as a result of the inaction by the professional in question. Within the 20-business-day period, Firm A makes all other required list information available to the IRS, together with a description of the information that is being searched for, all statements required by these regulations, and a proposed schedule to produce the missing documents.

(ii) Under these facts and circumstances, Firm A demonstrated that it could not reasonably, within the 20-business-day period, make available the portion of the list relating to one or possibly more transactions omitted from the list because of the inaction of the professional in question. Firm A therefore qualifies for an extension. Firm A had established policies and procedures reasonably designed and implemented to ensure and monitor compliance with the requirements of section 6112 and address non-compliance. Because the facts and circumstances indicate that Firm A made diligent efforts to maintain the materials constituting the list in a readily accessible form and as otherwise required under section 6112, the requested 20-business-day extension with respect to the portion of the list relating to the one known omitted transaction and to any other omitted reportable transactions resulting from the inaction of the professional in question should be granted.

(d) *Failure to make list available.* A failure to make the list available includes any failure to furnish the requested list to the IRS in a timely manner and in the form required under section 6112 and its corresponding regulations. Examples of failures to make a list available include instances in which a person fails to furnish any list; furnishes an incomplete list; or furnishes a list, whether or not complete, after the time required by this section.

(e) *Computation of penalty*—(1) *In general.* The penalty imposed by section 6708 accrues daily, beginning on the first calendar day after the expiration of the 20-business-day period following a written list request, and continues for each calendar day thereafter until the person's failure to furnish a list in the form required by section 6112 and its corresponding regulations ends. If the list is delivered or mailed to the IRS outside of the 20-business-day period, the penalty shall not apply on the day the list is delivered to the IRS or, if the list is mailed, the day the list is received by the IRS.

(2) *Computation of penalty after grant of extension.* If the IRS grants an extension of the 20-business-day period pursuant to paragraph (c)(3) of this section, the penalty imposed by section 6708 accrues daily, beginning on the first calendar day after the extension period expires, and continues for each calendar day thereafter until the person's failure to furnish a list in the form required by section 6112 and its corresponding regulations ends. If the list is delivered or mailed to the IRS outside of the period of extension, the penalty shall not apply on the day the list is delivered to the IRS or, if the list is mailed, the day the list is received by the IRS.

(3) *Designation agreements and concurrent application of penalty.* If material advisors with respect to the same reportable transaction enter into a designation agreement pursuant to section 6112(b)(2) and § 301.6112–1(f), separate penalties will be imposed on designated material advisors and nondesignated material advisors who are parties to the designation agreement for their respective periods of failure or noncompliance with a list request. A penalty will continue to accrue against a material advisor who is a party to a designation agreement until such time when a list complying with the requirements of section 6112 and its corresponding regulations is furnished by that material advisor or any other material advisor who is a party to the designation agreement.

(4) *Example.* The following example illustrates paragraph (e) of this section.

Example. The IRS hand delivers a written request for the list required to be maintained under section 6112 to Firm B, a material advisor, on Friday, March 10, 2017. Firm B must make the list available to the IRS on or before Friday, April 7, 2017, the 20th business day after the request was hand delivered. If Firm B fails to make the list available to the IRS by that day, absent reasonable cause or the IRS's grant of an extension of the response time, the $10,000-per-day penalty begins on Saturday, April 8, 2017. The $10,000 per day penalty will continue for each subsequent calendar day until Firm B makes the complete list available, except for those days for which Firm B demonstrates reasonable cause. If Firm B hand delivers a complete copy of the requested list to the IRS on the morning of Tuesday, April 11, 2017, absent reasonable cause or the IRS's prior grant of an extension for the response time, a penalty of $30,000 will be imposed upon Firm B (for April 8, 9, and 10). See paragraphs (g) and (h) of this section for an explanation of reasonable cause.

(f) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Material advisor* means a person described in section 6111 and § 301.6111–3(b).

(2) *Business day* means every calendar day other than a Saturday, Sunday, or legal holiday within the meaning of section 7503.

(3) *Reportable transaction* means a transaction described in section 6707A(c)(1) and section 1.6011–4(b)(1).

(4) *Listed transaction* means a transaction described in section 6707A(c)(2) and § 1.6011–4(b)(2) of this chapter.

(g) *Reasonable cause—general applicability*—(1) *Overview.* The section 6708 penalty will not be imposed for any day or days for which the person shows that the failure to make a complete list available to the IRS was due to reasonable cause. The determination of whether a person had reasonable cause is made on a case-by-case and day-by-day basis, taking into account all the relevant facts and circumstances. Facts and circumstances relevant to a material advisor's reasonable cause for failing to make available the list on a specific day include facts and circumstances arising after the request for the list. The person's showing of reasonable cause should relate to each specific day or days for which the person failed to make available the requested list. Factors establishing reasonable cause include, but are not limited to, factors identified in paragraphs (g) and (h) of this section.

(2) *Good-faith factors.* The most important factors to establish reasonable cause are those that reflect the extent of the person's good-faith efforts to comply with section 6112. The following factors, which are not exclusive, will be considered in determining whether a person has made a good-faith effort to comply with the section 6112 requirements:

(i) The person's efforts to determine or assess its status as a material advisor as defined by section 6111;

(ii) The person's efforts to determine the information and documentation required to be maintained under section 6112;

(iii) The person's efforts to meet its obligations to maintain a readily producible list as required by section 6112;

(iv) The person's efforts, upon receiving the list request, to make the list available to the IRS within the 20-business-day period (or extended period) under paragraphs (a), (b), and (c)(3) of this section; and

(v) The person's efforts to ensure that the list furnished to the IRS is accurate and complete.

(3) *Ordinary business care.* The exercise of ordinary business care may constitute reasonable cause. To show ordinary business care, the person may, for example, show that the person established, and adhered to, procedures reasonably designed and implemented to ensure compliance with the section 6112 requirements. In all instances when ordinary business care is claimed as constituting reasonable cause, a person must show that the person took immediate steps, upon discovering any failure relating to the list, to correct the failure. A person's failure to take immediate steps to correct a failure related to the list upon discovering the failure is a factor weighing against a conclusion that the person exercised ordinary business care. Notwithstanding the occurrence of an isolated and inadvertent failure, a person still may be able to demonstrate that the person exercised ordinary business care, considering all the relevant facts and circumstances, but only if the person had established and adhered to procedures reasonably designed and implemented to ensure compliance with the section 6112 requirements.

(4) *Supervening events.* A person may establish reasonable cause for one or more days for which, considering all the relevant facts and circumstances, the failure to timely furnish the list required by section 6112 was due solely to a supervening event beyond the person's control. Events beyond a person's control may include fire, flood, storm, or other casualty; illness; theft; or other similarly unexpected event that damages or impairs the person's relevant business records or system for processing and providing these records, or that affects the person's ability to maintain the section 6112 list or make it available to the IRS. Reasonable cause may be established only for the period that a person who exercised ordinary business care would need to provide the list from alternative records in existence, or make the list available, under the specific facts and circumstances.

(5) *Reliance on opinion or advice*—(i) *In general.* A person may rely on an independent tax professional's advice to establish reasonable cause. The reliance, however, must be reasonable and in good faith, in light of all the other facts and circumstances. For a person to be considered to have relied on the advice, the advice must have been received by the person before the date the list is required to be made available to the IRS. If the person received advice from an independent tax professional, the person's reliance on that advice will be considered reasonable only if the independent tax professional reasonably believed that it is more likely than not that the person does not have an obligation imposed by section 6112. For example, this advice may conclude that the person is not a material advisor; that the transaction upon which the person provided material aid, assistance, or advice is not a reportable transaction for which a list was required to be maintained as of the date of the advice; that the information and documents to be produced constitute the required list; or that the information or documents withheld by the person are not required to be produced. The advice must also take into account and consider all relevant facts and circumstances, not rely on unreasonable legal or factual assumptions, not rely on or take into account the possibility that a list request may not be made, and not rely on unreasonable representations or statements of the person seeking the advice. Advice from a tax professional who is not independent may be considered in determining reasonable cause if, in light of and in relation to all the other facts and circumstances, taking into account such advice is reasonable. However, by itself, advice from a tax professional who is not independent is not sufficient to establish reasonable cause. Independent tax professional advice is not required to establish reasonable cause and the failure to obtain advice from an independent tax professional does not preclude a finding of reasonable cause if, based on the totality of all of the relevant facts and circumstances, reasonable cause has been established.

(ii) *Independent tax professional.* For purposes of this section, an independent tax professional is a person who is knowledgeable in the relevant aspects of Federal tax law and who is not a material advisor with respect to the specific transaction that is the subject of the list request. For advice related to a listed transaction, a person who is a material advisor with respect to any transaction that is the same as or substantially similar to the type of transaction that is the subject of the list request will not be considered an independent tax professional.

(6) *Examples.* The following examples illustrate this paragraph (g). These examples are intended to illustrate how the facts and circumstances in paragraphs (g)(2) through (g)(5) of this section may apply; in any given case, however, all of the facts and circumstances must be analyzed.

Example 1. On August 11, 2017, the IRS sends a list request via certified mail to Firm C, a material advisor. Firm C consists of a sole practitioner, X, who is away from the office on vacation on this date. X has arranged for a colleague, Y, to review Firm C's mail, email, and telephone messages daily during his absence. X returns to the office the day after his vacation ends, on September 5, 2017, and immediately contacts the IRS to notify it of his absence. Firm C makes a complete list available to the IRS on September 19, 2017, 10 business days after he has returned from vacation. Firm C establishes that X was on vacation at the time the list request was sent to Firm C, and Firm C promptly furnished the requested list in a manner and time period reflecting ordinary business care and prudence upon X's return to the office. Under these circumstances, Firm C is considered to have made a good-faith effort to comply with the section 6112 requirements. Firm C has established reasonable cause for the entire period between the expiration of the 20-business-day period following the list request and the date the list was made available to the IRS. See paragraphs (g)(2) and (3) of this section.

Example 2. On March 3, 2017, the IRS hand delivers to Firm D, a material advisor, a list request related to a transaction believed by the IRS to have been implemented in November 2008 by a group of Firm D's clients (the advisees). Firm D's involvement in the transaction included implementing the transaction on behalf of some but not all of the advisees. Firm D timely makes the requested list available to the IRS. Upon review, the IRS determines that the information furnished by Firm D appears to be accurate, but the IRS believes that some of the information is incomplete because it does not contain information about certain individuals who were identified through other investigative means as Firm D's clients who may have engaged in the transaction. In response to a follow-up inquiry by the IRS, Firm D establishes, however, that it is not a material advisor with respect to these taxpayers. Under these circumstances, Firm D has furnished the list as required by section 6112. Because the list was complete when furnished, Firm D need not make a showing of reasonable cause. See paragraph (g)(1) of this section.

Example 3. The IRS sends a list request by certified mail to Firm E, a material advisor. Firm E maintains the materials responsive to the list request on a portable data storage device. Under Firm E's established procedures for maintaining section 6112 lists, once the transaction is completed, paper documents are scanned and saved electronically according to Firm E's records management procedures. Under Firm E's records management procedures, after the scanning process is completed, Firm

E sends the paper documents to an off-site storage facility. Three days before the 20th business day following the date of the written request, the electronic data is permanently destroyed. Firm E contacts the IRS representative listed as a contact person on the section 6112 list request to advise him that the relevant data was permanently destroyed. Firm E establishes that it exercised ordinary business care but that the data was nevertheless destroyed due to circumstances outside of its control. Under these circumstances, Firm E has reasonable cause for the period of time that Firm E cannot respond to the list request due to circumstances out of Firm E's control. The reasonable cause exception, however, will only be available to Firm E for the period of time that a person who exercises ordinary business care would need to obtain the materials that are part of the list, including in this case paper documents from the off-site storage facility, and furnish the list to the IRS. See paragraphs (g)(3) and (4) of section.

Example 4. On February 2, 2017, the IRS hand delivers a list request to Firm F, a material advisor. Firm F filed with the IRS the disclosure statement required by section 6111 for the reportable transaction that is the subject of the list request but did not maintain the section 6112 list documentation in a readily accessible format after filing the section 6111 statement. On March 3, 2017, the 20th business day (due to the Presidents' Day holiday) after the list request is delivered to Firm F, Firm F contacts the IRS to ask for additional time to comply with the list request, stating that it could not gather the list information together in 20 business days. Because Firm F is not able to show that it made diligent efforts to maintain the materials constituting the list in a readily accessible form, the IRS should not grant Firm F an extension of time. See paragraph (c)(3) of this section. Further, Firm F does not have reasonable cause because it has failed to demonstrate a good-faith effort to comply with the section 6112 requirements and ordinary business care. See paragraphs (g)(2) and (3) of this section.

Example 5. On August 11, 2017, the IRS sends a list request, via certified mail, to Firm G, a material advisor. Firm G consists of a sole practitioner, P. Firm G maintains the materials responsive to the list request electronically. Generally, under Firm G's records management procedures, once a transaction is completed, the documents related to that transaction are scanned and then saved electronically consistent with IRS guidance on maintaining books and records in electronic form. P is aware of the list request but ignores it. On September 24, 2017, the 13th calendar day after the 20-business-day period following the list request (due to the Labor Day holiday), P suffers a temporary but debilitating illness that lasts 22 days. Following the illness, P immediately returns to work. After returning to work, P continues to ignore the list request. In this situation, the facts and circumstances indicate that Firm G does not have reasonable cause for any day in which there was a failure to make the list available to the IRS, including the 22 days due to the intervening event, because the failure was not due solely to the supervening event occurring on September 24, 2017. Firm G did not make a good-faith effort to make the list available to the IRS before or after the supervening event occurred. Firm G is liable for the $10,000 per day penalty from the first day following the expiration of the 20-business-day period until but not including the day that Firm G furnishes the list to the IRS. See paragraphs (g)(2) and (4) of this section.

Example 6. On August 11, 2017, the IRS sends a list request, via certified mail, to Firm H, a material advisor. Firm H, consists of a sole practitioner, P. Firm H maintains the materials responsive to the list request electronically. Generally, under Firm H's records management procedures, once the transaction is completed, the documents are scanned and then saved electronically consistent with IRS guidance on maintaining books and records in electronic form. P is aware of the list request and begins compiling the documents to respond to the IRS within the 20-business-day period ending on September 11, 2017 (due to the Labor Day holiday). Before responding to the list request, P suffers a temporary but debilitating illness on September 3, 2017, that lasts through September 19, 2017. Upon returning to work on September 20, 2017, P contacts the IRS to explain that P experienced a temporary but debilitating illness from September 3, 2017, through September 19, 2017, and that P has returned to the office and intends to furnish the list to the IRS within a short period of time. Firm H furnishes the list to the IRS on September 22, 2017. In this situation, the facts and circumstances indicate that Firm H has reasonable cause for the period from September 12, 2017 until September 21, 2017, attributable to P's illness. The failure to furnish the list in a timely fashion was solely attributable to the supervening event occurring on September 3, 2017, and Firm H promptly furnished the requested list in a manner and time period reflecting ordinary business care upon P's return to the office. Firm H is considered to have made a good-faith effort to comply with the section 6112 requirements. Firm H has established reasonable cause for the entire period between the expiration of the 20-business-day period following the list request and the date Firm H furnished the list to the IRS. See paragraphs (g)(2) and (4) of this section.

Example 7. Firm I receives a list request for transactions that are the same or substantially similar to the listed transaction described in Notice 2002–21, 2002–1 CB 730. Firm I will be considered a material advisor with respect to a particular transaction for which it provided advice if the transaction is the same as or substantially similar to the transaction described in Notice 2002–21. Firm I, however, is unsure whether the transaction is the same as or substantially similar to the transaction described in this Notice. Firm I obtains an opinion from Firm L, a law firm, on this issue. P, a partner in Firm L, provided tax advice to clients who invested in other Notice 2002–21 transactions, including how to report the purported tax benefits from the transaction on their income tax returns, and Firm L is a material advisor with respect to those transactions. Because Firm L is a material advisor with respect to the type of transaction that is the same as or substantially similar to the transaction described in Notice 2002–21, Firm L is not considered an independent tax professional under paragraph (g)(5)(ii) of this section. Therefore, Firm I cannot rely on advice provided by Firm L to establish reasonable cause under this paragraph (g). The IRS may consider Firm L's advice in determining reasonable cause in light of other facts and circumstances, but Firm L's advice, without more, is not sufficient to establish reasonable cause because P is not an independent tax professional under paragraph (g)(5)(ii) of this section.

Example 8. Firm J, a law firm, provides advice to various clients of the firm regarding the potential tax benefits of a reportable transaction under § 1.6011–4(b)(5) of this chapter (involving a section 165 loss) and is a material advisor with respect to that transaction. Firm J also provides advice to Firm M, an accounting firm, regarding the same transaction. Firm M then advises various Firm M clients regarding this same transaction, and is a material advisor. The transaction is not a listed transaction. Firm N, a law firm that is not associated with Firm J and has not provided advice with respect to the same transaction to Firm M, has provided advice to its own clients regarding other transactions subject to § 1.6011–4(b)(5) of this chapter, but not the particular transaction that was the subject of Firm J's advice to Firm M. The IRS hand delivers a list request to Firm M, the subject of which is the transaction regarding which Firm J provided advice to Firm M. Before the expiration of the 20-business-day period, Firm M seeks advice from Firm J and Firm N about the propriety of withholding certain documents related to the transaction. Because Firm J provided advice with respect to the particular transaction that is the subject of the list request, Firm J is not an independent tax professional under paragraph (g)(5)(ii) of this section. Although Firm N has provided advice on a transaction that is considered a reportable transaction under § 1.6011–4(b)(5) of this chapter, Firm N is considered to be an independent tax professional under paragraph (g)(5)(ii) of this section because Firm N did not provide material assistance with respect to the particular transaction that is the subject of the list request.

(h) *Reasonable cause—special considerations*—(1) *Material advisor no longer in existence.* If a material advisor has dissolved, been liquidated, or otherwise is no longer in existence, the person required by section 6112 to maintain the list (the "responsible person") is subject to the penalty for failing to make the list available. In considering whether a responsible person or successor in interest has reasonable cause for any failure to timely make the list available to the IRS, the IRS will consider all of the facts and circumstances, including those facts and circumstances relating to the dissolution, liquidation, and winding up of the original material advisor's business and any efforts the original material advisor made to comply with the section 6112 requirements before the dissolution or liquidation. When appropriate or applicable, due diligence, if any, performed by a responsible person or successor in interest will be considered, and due consideration will be given for acts taken by that person to minimize the potential for violating the section 6112 requirements.

(2) *Review by IRS.* Whether reasonable cause exists for a period of time will be determined based on all the relevant facts and circumstances, including facts and circumstances arising after the request for the list. If a material advisor establishes that, in its efforts to comply with the provisions of section 6112 and its corresponding regulations, it acted in good faith, as defined in paragraph (g)(2) of this section, the material advisor will be deemed to have reasonable cause for the periods of time the IRS takes to review a furnished list for compliance with the section 6112 requirements and to inform the material advisor of any identified failures in the list. If the material advisor does not establish that it acted in good faith the IRS will not consider the time it takes to review the list or inform the material advisor of identified failures as a factor in determining whether the material advisor has reasonable cause for that period.

(3) *Examples.* The following examples illustrate paragraph (h)(2) of this section.

Example 1. On February 2, 2017, the IRS hand delivers a list request to Firm O, a material advisor. On March 3, 2017, the 20th business day (due to the Presidents' Day holiday) after the list request is delivered to Firm O, Firm O sends a list to the IRS that was contemporaneously prepared after Firm O issued advice with respect to the reportable transaction and continuously maintained in accordance with the requirements of section 6112 and the related regulations. Before sending the list, a supervisor at Firm O carefully reviewed the list to verify that it was comprehensive and accurate. The IRS completes its review on March 23, 2017, and determines that the list is not complete because Firm O furnished a draft copy of the tax opinion, rather than the final document, which Firm O had mistakenly misfiled. After Firm O is notified of the missing information, Firm O immediately furnishes a complete copy of the final version of the tax opinion. Firm O made a good-faith effort to comply with the section 6112 requirements, including its efforts to ensure that the list that was furnished to the IRS was accurate and complete. Firm O has reasonable cause for the entire period between the expiration of the 20-business-day period following the list request and the date it furnished the complete list to the IRS.

Example 2. On February 2, 2017, the IRS hand delivers a list request to Firm P, a material advisor. Firm P's involvement in the reportable transaction included implementing the transaction on behalf of some but not all of Firm P's clients. On March 3, 2017, the 20th business day (due to the Presidents' Day holiday) after the list request is delivered to Firm P, Firm P sends the list to the IRS. The IRS completes its review on March 23, 2017. The IRS believes the client list is incomplete because it does not contain information about certain individuals who were identified through other investigative means as clients of Firm P who may have engaged in the transaction. On March 27, 2017, in response to a follow-up inquiry by the IRS, Firm P establishes that it is not a material advisor with respect to these taxpayers. Therefore, the March 3, 2017 list was complete and accurate when first furnished. Under these circumstances, Firm P has timely furnished the list as required by section 6112. Because Firm P complied with the requirements of section 6112 no penalty applies, and Firm P does not need to establish reasonable cause for the period from March 4, 2017, through March 27, 2017, when the IRS was reviewing the list.

Example 3. On February 2, 2017, the IRS hand delivers a list request to Firm Q, a material advisor. On March 3, 2017, the 20th business day (due to the Presidents' Day holiday) after the list request is delivered to Firm Q, Firm Q sends the list to the IRS. Firm Q had not maintained a list contemporaneously after issuing the advice with respect to the reportable transaction, and created the list during the 20 business days before providing the list to the IRS. To meet the 20-business-day deadline, a supervisor did not review the final list before sending it to the IRS. The IRS completes its review on March 23, 2017, and determines that the list is not complete because it does not include 15 persons for whom Firm Q acted as a material advisor with respect to the reportable transaction. Firm Q furnishes the additional information on March 27, 2017. Because Firm Q is not able to show that it made diligent efforts to maintain the materials constituting the list in a readily accessible form and that it made a reasonable effort to ensure that the list that was furnished to the IRS was accurate and complete, Firm Q cannot establish that it exhibited a good-faith effort to comply with the section 6112 requirements. Firm Q does not have reasonable cause for its failure to furnish the complete list from March 4, 2017, through March 26, 2017.

Example 4. Within the 20-business-day period following a list request, Firm R sends four boxes of documents comprising the required list to the IRS using a commercial delivery service. The IRS receives only three of the boxes because box 4 was erroneously self-addressed using Firm R's office address. Box 4 arrives at Firm R's office on January 6, 2017, the 2nd calendar day after the 20th business day after the list request was made. Firm R immediately recognizes its clerical error, promptly contacts the IRS, and resends the original and unopened box 4, properly addressed, to the IRS together with documentation supporting the error. The IRS receives box 4 on January 9, 2017. Under these circumstances, Firm R has reasonable cause for the late delivery of box 4 because it made a good-faith attempt to timely comply with the list request and immediately corrected an inadvertent error upon its discovery. As a result, no penalty will be imposed based on the delay in providing box 4. If, after inspection, the IRS determines that, even with the contents of box 4, the list is incomplete or defective, Firm R must establish reasonable cause for the incomplete nature of the list or the defect to avoid imposition of a penalty for the period beginning January 5, 2017, until but not including the day that Firm R furnishes the list to the IRS.

Example 5. (i) Firm S is a large law firm that is a material advisor. Firm S conducts annual sessions to educate its professionals about reportable transactions and the firm's obligations related to those reportable transactions. Firm S instructs its professionals to provide information on tax engagements that involve reportable transactions and to provide the documents required to be maintained under section 6112 to Firm S's compliance officer for list maintenance purposes. Firm S's policy provides that, for each engagement involving a reportable transaction, one firm professional will send an email to the firm's compliance officer about the engagement and then direct a subordinate to send to the firm's compliance officer the documents required to be maintained.

(ii) Firm S receives a request from the IRS for a section 6112 list. In compiling its list to turn over to the IRS during the 20-business-day period, Firm S asks all professionals to ensure that they have reported all engagements involving a reportable transaction to the firm's compliance officer. Before submission to the IRS, a Firm S supervisor reviews the list to ensure completeness. Firm S has no reason to know of any deficiencies, and in compiling its list, Firm S discovers no deficiencies.

(iii) Upon review of the list, the IRS determines that the information furnished by Firm S appears to be accurate, but the IRS believes that some of the information is incomplete because it does not contain information about an individual who may have engaged in the transaction and who was identified through other investigative means as Firm S's client. In response to a follow-up inquiry by the IRS, Firm S immediately reviews its files and discovers that a former Firm S professional, who is no longer employed by Firm S, provided material advice to the individual with respect to carrying out a reportable transaction, but did not send an email to the firm's compliance officer about the transaction or direct a subordinate to send the documents required to be maintained to the firm's compliance officer. Firm S immediately furnishes the missing information and documents related to the identified omission to the IRS.

(iv) Firm S establishes that the professional in question ordinarily complied with Firm S's list maintenance procedures and that

Firm S had no reason to know of this one omission or to suspect that the professional had failed to report any reportable transactions to the firm's compliance officer in accordance with the firm's policies. Firm S also immediately undertakes a thorough search of its electronic and paper files to locate any additional reportable transactions relating to the professional in question that may have been omitted from the list. Under these circumstances, Firm S has demonstrated that it has acted in good faith in its efforts to comply with section 6112 and is deemed to have reasonable cause for the period of time the IRS took to review the furnished list and to inform the material advisor of the identified failure in the list. See paragraph (h)(2) of this section. The reasonable cause exception, however, will only be available to Firm S with respect to the omission identified by the IRS for the period of time that a person who exercises ordinary business care would need to obtain the information and documents related to the identified omission. See paragraph (g)(3) of this section. With respect to any other omissions related to the same professional and not identified by the IRS, the reasonable cause exception will only be available to Firm S for the period of time that a person who exercises ordinary business care would need to ascertain whether any other reportable transactions were omitted from the list and to obtain the information and documents related to any such omissions. See paragraph (g)(3) of this section.

(i) *Effective/applicability date.* This section applies to all requests for lists required to be maintained under section 6112, including lists that persons were required to maintain under section 6112(a) as in effect before October 22, 2004, made on or after April 28, 2016.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: March 22, 2016.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2016–09765 Filed 4–27–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2016–0054]

Eighth Coast Guard District Annual Safety Zones; Pittsburgh Pirates Fireworks; Allegheny River Mile 0.2 to 0.8; Pittsburgh, PA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for the Pittsburgh Pirates Fireworks on the Allegheny River, from mile 0.2 to 0.8, extending the entire width of the river to provide for the safety of life on navigable waters. This rule is effective following certain home games throughout the Major League Baseball season, including post-season home games if the Pittsburgh Pirates make the playoffs. During the enforcement period, entry into, transiting, or anchoring in the safety zone is prohibited to all vessels not registered with the sponsor as participants or official patrol vessels, unless specifically authorized by the Captain of the Port (COTP) Pittsburgh or a designated representative.

DATES: The regulations in 33 CFR 165.801 Table 1, Sector Ohio Valley, Line No. 1 will be enforced for the Pittsburgh Pirates Season Fireworks as identified in the **SUPPLEMENTARY INFORMATION** section below with dates and times.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email MST1 Jennifer Haggins, Marine Safety Unit Pittsburgh, U.S. Coast Guard; telephone 412–221–0807, email *Jennifer.L.Haggins@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Safety Zone for the annual Pittsburgh Pirates Fireworks listed in 33 CFR 165.801 Table 1, Sector Ohio Valley, Line No. 1 from 8:45 p.m. to 11:59 p.m. on the following dates: April 16 and 30, May 19, June 11, July 21, August 20, September 8, and during the 3 hours following post-season home games, should the Pittsburgh Pirates make the playoffs, in October and November, 2016. Should inclement weather require rescheduling, the safety zone will be effective following games on a rain date to occur within 48 hours of the scheduled date. This action is being taken to provide for safety of life on navigable waters during a fireworks display taking place on and over the waterway. These regulations can be found in the Code of Federal Regulations, under 33 CFR 165.801. As specified in § 165.801, entry into the safety zone is prohibited unless authorized by the COTP or a designated representative. Persons or vessels desiring to enter into or passage through the safety zone must request permission from the COTP or a designated representative. If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

This notice of enforcement is issued under authority of 33 CFR 165.801 and 5 U.S.C. 552 (a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via Local Notice to Mariners and updates via Marine Information Broadcasts.

Dated: March 30, 2016.

L. McClain, Jr.,

Commander, U.S. Coast Guard, Captain of the Port Pittsburgh.

[FR Doc. 2016–09990 Filed 4–27–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter IV

[CFDA Number: 84.420A; Docket ID ED–2015–OCTAE–0095]

Final Priorities, Requirements, Definitions, and Selection Criteria—Performance Partnership Pilots for Disconnected Youth

AGENCY: Office of Career, Technical, and Adult Education, Department of Education.

ACTION: Final priorities, requirements, definitions, and selection criteria.

SUMMARY: The Assistant Secretary for Career, Technical, and Adult Education (Assistant Secretary) announces priorities, requirements, definitions, and selection criteria under the Performance Partnership Pilots (P3) for Disconnected Youth competition. The Assistant Secretary may use the priorities, requirements, definitions, and selection criteria for competitions for fiscal year (FY) 2015 and later years. We take this action in order to support the identification of strong and effective pilots that are likely to achieve significant improvements in educational, employment, and other key outcomes for disconnected youth.

DATES: *Effective Date:* These priorities, requirements, definitions, and selection criteria are effective May 31, 2016.

FOR FURTHER INFORMATION CONTACT: Braden Goetz, U.S. Department of Education, 400 Maryland Avenue SW., Room 11141, PCP, Washington, DC 20202. Telephone: (202) 245–7405 or by email: *Braden.Goetz@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of This Regulatory Action: The Assistant Secretary announces priorities, requirements, definitions, and selection criteria under the Performance Partnership Pilots (P3) for Disconnected Youth competition. The Assistant Secretary may use the priorities, requirements, definitions, and selection criteria for competitions for fiscal year (FY) 2015 and later years. We take this action in order to support the identification of strong and effective pilots that are likely to achieve significant improvements in educational, employment, and other key outcomes for disconnected youth.

Summary of the Major Provisions of This Regulatory Action

This regulatory action announces 13 priorities, 7 application requirements, 4 program requirements, 13 definitions, and 7 selection criteria that may be used for P3 competitions for FY 2015 and later years.

Costs and Benefits: The Department of Education (Department) believes that the benefits of this regulatory action outweigh any associated costs, which we believe will be minimal. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering P3. The benefits of the priorities, requirements, definitions, and selection criteria are that they would promote the efficient and effective use of the P3 authority. Please refer to the Regulatory Impact Analysis in this notice of final priorities, requirements, definitions, and selection criteria (NFP) for a more detailed discussion of costs and benefits.

Purpose of Program: P3, first authorized by Congress for FY 2014 by the Consolidated Appropriations Act, 2014 (2014 Appropriations Act) and reauthorized for FY 2015 by the Consolidated and Further Continuing Appropriations Act, 2015 (2015 Appropriations Act) and for FY 2016 by the Consolidated Appropriations Act, 2016 (2016 Appropriations Act) (together, the Acts), authorize the Departments of Education, Labor, Health and Human Services, Housing and Urban Development,[1] and Justice,[2] the Corporation for National and Community Service and the Institute of Museum and Library Services (collectively, the Agencies), to enter into Performance Partnership Agreements (performance agreements) with State, local, or tribal governments to provide additional flexibility in using certain of the Agencies' discretionary funds, including competitive and formula grant funds, across multiple Federal programs. The authority enables pilot sites to test innovative, outcome-focused strategies to achieve significant improvements in educational, employment, and other key outcomes for disconnected youth using new flexibility to blend existing Federal funds and to seek waivers of associated program requirements. Section 526(a)(2), Division H of the 2014 Appropriations Act states that " '[t]o improve outcomes for disconnected youth' means to increase the rate at which individuals between the ages of 14 and 24 (who are low-income and either homeless, in foster care, involved in the juvenile justice system, unemployed, or not enrolled in or at risk of dropping out of an educational institution) achieve success in meeting educational, employment, or other key goals."

Program Authority: Section 524 of Division G and section 219 of Division B of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235) and section 219 of Division B, section 525 of Division H, and section 242 of Division L of the Consolidated Appropriations Act, 2016 (Pub. L. 114–113).

We published a notice of proposed priorities, requirements, definitions, and selection criteria (NPP) in the **Federal Register** on October 22, 2015 (80 FR 63975). That notice contained background information and our reasons for proposing the particular priorities, requirements, definitions, and selection criteria. In response to public comment, this notice reduces burden on applicants by removing several application requirements that had been proposed in the NPP. This NFP also revises the priority for disconnected youth who are unemployed and out-of-school (Priority 4) to limit the priority to those unemployed and out-of-school youth who face significant barriers to accessing education and employment. Additionally, this NFP revises the priorities for projects designed to improve outcomes for subpopulations of high-need disconnected youth (*i.e.*, youth who are unemployed and out of school, youth who are English Learners (ELs), youth with a disability, homeless youth, youth in foster care, youth involved in the justice system, and youth who are immigrants or refugees) to specify that, in order to meet the priority, a project must serve the particular subpopulation identified in the priority and be likely to result in significantly better educational or employment outcomes for the subpopulation. Finally, this NFP establishes an additional priority for projects that serve disconnected youth who are pregnant or parenting and that are likely to result in significantly better educational or employment outcomes for such youth.

Public Comment: In response to our invitation in the NPP, 11 parties submitted comments on the proposed priorities, requirements, definitions, and selection criteria.

We group major issues according to subject. Generally, we do not address technical and other minor changes.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priorities, requirements, definitions, and selection criteria since publication of the NPP follows.

General

Comment: One commenter recommended that we streamline and simplify the application process to permit applicants to submit brief letters that describe their requests for waivers in lieu of a formal application that meets the requirements and addresses the selection criteria proposed in the NPP. Two commenters expressed concern about the length of the selection process that identified the FY 2014 P3 pilots; one of these commenters recommended that, going forward, pilots be selected within one month of the application deadline.

Discussion: We acknowledge the commenters' concerns about the length and structure of the application and selection processes. In fact, many of the changes from the first competition that were proposed in the NPP were intended to streamline and simplify those processes. As we note later in our discussion of the comments on the proposed application requirements, the NFP makes additional changes to the application requirements with that same goal. We believe this will make the application process clearer and easier for applicants, and also shorten the timeline for the selection process.

However, we also note the importance of a thorough review of applications and engagement with potential pilots to ensure we collect all information required to complete a performance agreement. Such a review is critical to meeting the statutory conditions on granting waivers and awarding pilots. Some of the concerns raised by commenters will be addressed as the Agencies and the field gain experience with P3 and need not necessarily be addressed through rulemaking.

Changes: None.

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[1] The Department of Housing and Urban Development was first authorized to enter into performance agreements by the 2016 Appropriations Act.

[2] The Department of Justice was first authorized to enter into performance agreements by the 2015 Appropriations Act.

Priorities

Comment: One commenter expressed opposition to the proposed priorities for special populations, such as youth who are ELs, contending that they would make the application process too complicated.

Discussion: We want to clarify the purpose of the priorities for different special populations. The statutory definition of disconnected youth for P3 is broad and includes youth who are at risk of dropping out in addition to youth who fall into other categories of eligible youth, such as those who are not employed or enrolled in school. The general purpose of these priorities is to focus attention on subpopulations of disconnected youth with great needs who might otherwise not be served or to address particular challenges that communities face in reaching these populations. The priorities are intended as options for use in future P3 competitions. The Agencies may choose which, if any, of the priorities included in this NFP are appropriate for a particular P3 competition and how the priority or priorities would apply. For example, a priority may be used as an absolute priority. This means that applicants that propose projects under that priority must address it to be eligible to be selected as a pilot. A priority could also be used as a competitive preference priority. This means that applicants who propose projects addressing that priority could receive additional points for their applications.

We acknowledge the commenter's general concern that a large number of priorities may make the application process more complicated. For that reason, although we publish seven priorities for different subpopulations in this NFP, we do not intend to use all of the subpopulation priorities in a single year's competition. Instead, for each year in which we hold a competition, we would likely choose no more than a few high-need subpopulations to emphasize.

Changes: None.

Comment: A commenter recommended that the special populations described by the proposed priorities be identified as illustrative examples of populations that could be served by a P3 project, rather than set out as priorities. The commenter was concerned that some subpopulations of disconnected youth were not included among the priorities proposed in the NPP. A second commenter noted that there is a significant number of disconnected youth who meet more than one of the proposed subpopulation priorities and expressed concern that applicants would be limited to serving only the subpopulation identified in a particular priority. The commenter encouraged us to affirm that applicants could serve youth with characteristics described by multiple priorities, such as, for example, a project that proposed to serve youth who have been involved in the justice system and who also are immigrants or refugees.

Discussion: We understand the commenters' concerns and wish to emphasize that the purpose of the subpopulation priorities is to create incentives for applicants to serve disconnected youth with great needs who might otherwise not be served or who may be difficult to reach. The use of the priorities in a given competition would not bar applicants from serving other disconnected youth who are included within the statutory definition of the term. Even if we were to use one of the subpopulation priorities as an absolute priority, the effect would be to require applicants to demonstrate how they will ensure that the subpopulation receives services. However, pilots would not be required to exclusively serve that subpopulation. Applicants also could serve youth with characteristics described by multiple priorities, such as, for example, a project that proposed to serve youth who have been involved in the justice system and who also are immigrants or refugees.

Changes: None.

Comment: One commenter recommended that the number of subpopulation priorities be reduced to focus on youth with the greatest needs.

Discussion: As we explained in the NPP, all of the specific subpopulations for which we proposed priorities in the NPP have great needs. It may be a matter of opinion, perspective, or local circumstances to say which subpopulation has the greatest needs. Therefore there is ample reason to encourage P3 pilots to use innovative approaches and flexibility to overcome the challenges these subpopulations face and generate improved outcomes for these youth. For example, in proposing a priority for youth who are ELs, we pointed out that the average cohort graduation rate for ELs was only 61 percent for the 2012–13 school year, while the national average cohort graduation rate for all youth was 81 percent. Similarly, in proposing a priority for youth who are homeless, we noted that these young people experience higher rates of acute and chronic physical illness and have higher rates of mental illness and substance abuse than their peers who have stable housing. We also noted that the high mobility associated with homelessness also disrupts the education of these youth, placing them at greater risk of falling behind and dropping out of school.

We agree, however, that the priority for disconnected youth who are unemployed and out-of-school (Priority 4) should be amended to ensure that it is focused on those youth within this subpopulation who have the most significant needs. We note that a recent analysis of 2014 Current Population Survey (CPS) data found that, while youth ages 16 to 24 who were neither employed nor enrolled in school were more likely than their peers to be poor in 2014, a majority of these youth (56 percent) did not live in poverty in that same year.[3] Consequently, we believe it is appropriate to limit the priority to those unemployed and out-of-school youth who face significant barriers to education and employment. Such barriers could include, for example, having one or more disabilities or having been in the justice system. The same analysis of 2014 CPS data found that about one-third (34 percent) of youth ages 16 to 24 who were neither employed nor enrolled in school in 2014 reported that illness or disability was a major reason why they did not work. Involvement with the justice system is another example of a significant barrier to education and employment for youth who are neither employed nor enrolled in school. Many youth involved with the justice system face significant barriers to accessing the education and training they need to achieve independence and reintegrate into the community because the education and training available to them through correctional facilities, as well as upon release, often does not meet their needs.[4] For older youth involved with the adult criminal justice system, having a criminal record can severely limit the ability to secure employment.[5]

Changes: We have revised Priority 4 to limit it to apply to youth who are unemployed and out-of-school and who face significant barriers to accessing education and employment.

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[3] Fernandes, A.L. (2015). Disconnected Youth: A Look at 16 to 24 Year Olds Who Are Not Working or in School. Congressional Research Service Report No. R40535. Retrieved from *http://www.fas.org/sgp/crs/misc/R40535.pdf*.

[4] See, for example, Juvenile Justice Students Face Barriers to High School Graduation and Job Training (2010). Report No. 10–55. Tallahassee, FL: Office of Program Policy Analysis and Government Accountability, the Florida Legislature, Retrieved from: *www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1055rpt.pdf*.

[5] See, for example, Pager, D.P. and Western, B. (2009). Investigating Prisoner Reentry: The Impact of Conviction Status on the Employment Prospects of Young Men: Final Report to the National Institute of Justice. Document No.: 228584. Retrieved from: *www.ncjrs.gov/pdffiles1/nij/grants/228584.pdf*.

Comment: One commenter recommended we limit the applicability of the proposed priorities for subpopulations of disconnected youth to projects that would be likely to result in significant changes in the outcomes of the particular subpopulations identified in the priorities. Another commenter expressed support for the first commenter's proposal, but also recommended that we consider either limiting the subpopulation priorities to projects that would exclusively or principally serve these subpopulations or allow applicants to focus their applications on not more than one subpopulation identified in the priorities.

Discussion: We acknowledge the first commenter's suggestion that we limit the applicability of the priorities for subpopulations of disconnected youth to projects that would be likely to result in significant changes in the outcomes of the particular subpopulations they identify. We agree with the commenter. We disagree with the second commenter's recommendation that we revise the subpopulation priorities to require that projects principally or exclusively serve the subpopulations addressed in the priority because such a requirement may result in approaches that inappropriately segregate youth with special needs from their peers and reinforce program "silos" that P3 is intended to help communities break down. However, in the event that one of these subpopulation priorities is used as a competitive preference priority, we do think it would be appropriate to consider the extent to which an applicant would serve the particular subpopulation in assessing how well an application meets the priority. An applicant that proposed to serve a small number or percentage of the subpopulation could receive fewer points than an applicant that proposed to serve a larger number or percentage of the youth identified in the priority. We also acknowledge the second commenter's suggestion that we allow applicants to focus their applications on only one of the subpopulations identified in the priorities. We can accomplish that result without additional rulemaking. Should we decide to include two or more of the subpopulation priorities in any future P3 competition, we would have the opportunity to limit applicants to selecting only one of the priorities.

Changes: We have revised the priorities for the subpopulations of high-need disconnected youth (*i.e.*, youth who are unemployed and out of school, youth who are ELs, youth with a disability, homeless youth, youth in foster care, youth involved in the justice system, and youth who are immigrants or refugees) to specify that, in order to meet the priority, a project must both serve the particular subpopulation identified in the priority and be likely to result in significantly better educational or employment outcomes for the particular subpopulation identified in the priority. Peer reviewers will determine whether or the extent to which an applicant meets the priority based on the evidence an applicant includes in its application.

Comment: One commenter recommended that we establish a priority for urban communities with high rates of poverty and unemployment that have experienced violent protests in recent years.

Discussion: We agree with the commenter that there are numerous urban communities with high rates of poverty, unemployment, and violence that would benefit from P3. However, the 2016 Appropriations Act requires that pilots selected for FY 2015 and FY 2016 by the Agencies include "communities that have recently experienced civil unrest." This provision makes it unnecessary to use rulemaking to ensure such communities receive priority.

Changes: None.

Comment: Two commenters recommended that we establish a priority for projects that serve disconnected youth who are parents, including, particularly, projects that implement strategies that address the needs of both the parent and the child.

Discussion: We agree with the commenters that a priority for disconnected youth who are pregnant or parenting is appropriate because these adolescents and their children are at high risk for adverse outcomes. Adolescent childbearing, for example, significantly reduces the likelihood of the mother's earning a regular high school diploma, or completing at least two years of postsecondary education by age 30.[6] Teenage parenting also has negative consequences for fathers; they, too, are less likely to earn a high school diploma, and they complete fewer years of schooling than their non-parenting peers.[7] We also agree that two-generation strategies—that is, strategies that simultaneously address the needs of the parent and the needs of the child—can have great merit. To preserve the freedom of applicants to innovate and the flexibility inherent to P3, however, we do not believe a priority for disconnected youth who are pregnant or parenting should specify that two-generation strategies must always be used to address the priority.

Changes: We have established a priority (now Priority 11) for pilots that are likely to result in significantly better educational or employment outcomes for disconnected youth who are pregnant or parenting.

Comment: One commenter expressed support for establishing a priority for applicants whose State government had also agreed to provide flexibility to support implementation of the project.

Discussion: We recognize that flexibility from State and local requirements can be crucial to the successful implementation of a pilot. For that reason, the NFP includes the Application Requirement (c)(1)(A), which requires that an applicant provide written assurance that it has received any and all necessary state, local, or tribal flexibility, or will receive such flexibility within 60 days of being designated a pilot. However, we decline to create a separate priority for an applicant whose State has provided flexibility. We believe that the commenter's primary concern is whether the project design can be implemented effectively and will improve outcomes for disconnected youth. We do not believe there is additional benefit to a pilot that is able to implement effectively the pilots as designed due to a State government granting additional flexibility compared to one that has that ability regardless of State flexibility.

Changes: None.

Commenter: One commenter recommended that we establish a priority for projects that would be carried out by a partnership between a State, local, or tribal government and one or more non-governmental entities with experience and expertise in providing services to the population of youth who would be served.

Discussion: We agree that non-governmental entities can play valuable roles in the design, governance, and implementation of P3 pilots, but we decline to establish the recommended priority because we wish to preserve the flexibility of State, local, and tribal governments to innovate. For an initiative like P3 that seeks to provide State, local, and tribal governments greater flexibility in how they deliver services to disconnected youth, it would be inappropriately prescriptive to specify how and with which entities a pilot must engage to deliver services. We also note that this NFP includes a selection criterion that would evaluate applicants based on the strength and capacity of the proposed pilot partnership, which can include non-governmental entities.

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[6] Hoffman, S.D. (2008). Updated Estimates of the Consequences of Teen Childbearing for Mothers. In: Hoffman, S.D., and Maynard, R.A., eds. Kids Having Kids: Economic and Social Consequences of Teen Pregnancy. Washington, DC: Urban Institute Press: 74–92.

[7] Fletcher, J.M. and Wolfe, B.L. (2012). The effects of teenage fatherhood on young adult outcomes. Economic Inquiry, 50 (1), 182–201.

Changes: None.

Comment: One commenter recommended that each of the proposed priorities for subpopulations of disconnected youth be amended to include a requirement that projects provide career assessment and/or vocational evaluation services.

Discussion: We agree with the commenter that career assessment and advising may be helpful to disconnected youth in identifying and pursuing their career goals. However, amending each of the subpopulation priorities to mandate the provision of such services would be inconsistent with P3's focus on increasing the flexibility of State, local, and tribal governments to innovate and design new solutions to improve the outcomes of disconnected youth.

Changes: None.

Comment: Two commenters recommended that we establish a priority for projects that serve a Promise Zone.

Discussion: We agree with the commenters that a priority for projects that serve a Promise Zone has great merit. We note, however, that the Department already established such a priority in an NFP that was published in the **Federal Register** on March 27, 2014 (79 FR 17035). Because it has already been established, this priority may be used in any appropriate discretionary grant competition carried out by the Department in FY 2014 and subsequent years.

Changes: None.

Final Priority 2—Improving Outcomes for Disconnected Youth in Rural Communities.

Comment: One commenter expressed support for establishing a priority for projects that serve rural communities only.

Discussion: We acknowledge the commenter's support.

Changes: None.

Final Priority 3—Improving Outcomes for Disconnected Youth in Tribal Communities

Comment: One commenter expressed support for the proposed priority for projects that serve disconnected youth who are members of one or more State- or federally-recognized Indian tribal communities and that represent a partnership that includes one or more State- or federally-recognized Indian tribes.

Discussion: We acknowledge the commenter's support.

Changes: None.

Final Priority 5—Improving Outcomes for Youth Who are English Learners.

Comment: Two commenters expressed support for the proposed priority for projects that serve disconnected youth who are ELs.

Discussion: We acknowledge the commenters' support.

Changes: None.

Final Priority 7—Improving Outcomes for Homeless Youth.

Comment: Two commenters expressed support for the proposed priority for projects that are designed to improve outcomes for disconnected youth who are homeless youth.

Discussion: We acknowledge the commenters' support.

Changes: None.

Final Priority 10—Improving Outcomes for Youth Who are Immigrants or Refugees.

Comment: Two commenters expressed support for the proposed priority for projects that are designed to improve outcomes for disconnected youth who are immigrants or refugees.

Discussion: We acknowledge the commenters' support.

Changes: None.

Comment: Two commenters recommended that we revise the priority for immigrants or refugees to exclude individuals who have J–1 or F–1 visas.

Discussion: Individuals who are visiting the United States temporarily with a J–1 or F–1 visa are not immigrants. The J–1 and F–1 visas are nonimmigrant visas that are issued to individuals who have a permanent residence outside the U.S. and who wish to visit the U.S. on a temporary basis. J–1 visa holders participate temporarily in work-and study-based exchange visitor programs, while F–1 visa holders attend, on a full-time basis, a university or college, high school, private elementary school, seminary, conservatory, language training program, or other academic institution.

Changes: None.

Final Priority 12—Work-Based Learning Opportunities.

Comment: One commenter expressed support for the proposed priority for projects that provide disconnected youth with paid work-based learning opportunities and encouraged us to require all projects to offer paid work-based learning opportunities to the youth they serve during the summer months. Another commenter expressed concern about the proposed priority, contending that work experience opportunities may not be readily available in communities with high rates of unemployment, that not all youth may be ready to participate in a work-based learning opportunity because they have an intellectual disability, and that some projects may serve younger youth who are not old enough to work. The commenter conceded, however, that these exceptions are areas where P3 pilot may be most needed.

Discussion: Although we acknowledge the first commenter's support for the priority and agree that paid work-based learning is an important intervention for disconnected youth, we decline to require all projects to offer paid work-based learning opportunities during the summer months in order to preserve the flexibility inherent to P3. However, we do agree that it is appropriate to revise the priority to specify that an applicant must provide paid work-based learning to all of the disconnected youth it proposes to serve in order to meet the priority. We understand the second commenter's concerns about the difficulty of securing paid work-based learning opportunities in areas with high unemployment, but believe that applicants can overcome these difficulties with some creativity and determination in their project designs, including by establishing partnerships with employers and other non-governmental entities. We do not share the commenter's view that work-based learning may not be appropriate for some youth with disabilities; we believe that all youth with disabilities can participate in, and benefit from, work-based learning if they are provided the right accommodations and supports. With respect to the concern about younger youth who are not old enough to work, we note that youth must be at least 14 years of age to be included within P3's statutory definition of disconnected youth. Under regulations issued by the Department of Labor to implement the Fair Labor Standards Act, youth who are age 14 may work outside school hours in various non-manufacturing, non-mining, non-hazardous jobs under certain conditions.[8] Moreover, we note that work-based learning opportunities can include job shadowing and internships.

Changes: We have revised the priority to specify that an applicant must provide paid work-based learning to all of the disconnected youth it proposes to serve in order to meet the priority.

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[8] See 29 CFR part 570—Child Labor Regulations, Orders, and Statements of Interpretation.

Final Priority 13—Site-Specific Evaluation.

Comment: Two commenters expressed support for our proposal to consolidate what had been two priorities for site-specific evaluation, one for randomized controlled trials and another for evaluations that use a quasi-experimental design, into a single priority.

Discussion: We acknowledge the commenters' support.

Changes: None.

Comment: Two commenters expressed opposition to the proposed priority for applications that propose to conduct independent evaluations of their programs or specific components of their programs. Both commenters argued that the priority would be duplicative because a national evaluation of P3 is now underway. One of the commenters also expressed concern that projects would not implement high-quality evaluations because applicants lacked expertise in carrying out evaluations.

Discussion: We disagree with the commenters that a priority for site-specific evaluations would be duplicative of the national evaluation of P3 that is being carried out by the U.S. Department of Labor. We believe that promoting independent evaluations that focus exclusively on the implementation of a particular pilot is important because such studies are likely to yield valuable insights that might be missed by a national evaluation that examines the implementation and outcomes of all of the pilots. Moreover, we note that the national evaluation is focused on the first cohort of P3 pilots and it is not yet known to what extent the Agencies will support additional national evaluations to examine the experiences of subsequent cohorts. We do not share the commenter's concern about applicants' lack of expertise in evaluation because applicants may seek out others with this expertise to assist them in designing and carrying out an independent evaluation. Applicants that do not have expertise in evaluation or obtain it from other sources are unlikely to meet the priority because the assessment of the extent to which an applicant meets the priority will be based on, among other factors, the applicant's demonstrated expertise in planning and conducting an evaluation using a randomized controlled trial or quasi-experimental design.

Changes: None.

Comment: One commenter recommended that the priority for site-specific evaluation be amended to require the evaluation to examine the types of career assessment services provided, the outcomes of those services, how many of the assessments' recommendations were followed, and the outcomes of those recommendations.

Discussion: We decline to mandate that the evaluation examine career assessment services because not all projects may include such services.

Changes: None.

Comment: None.

Discussion: Upon further review, we identified a typographical error in the second sentence of the proposed priority for site-specific evaluation. The second sentence of this priority used the term "quasi-experimental evaluation study." The correct term, which is defined in the Education Department General Administrative Regulations (34 CFR 77.1) is "quasi-experimental design study."

Changes: We have changed the reference to "quasi-experimental evaluation" in the second sentence of the priority to "quasi-experimental design study."

Application Requirements

Comment: One commenter expressed concern that proposed Application Requirement (b), Statement of Need for a Defined Target Population, was similar to one of the proposed selection criteria. The commenter encouraged us either to clarify how the two provisions differed or to delete one of them. Another commenter contended that several proposed application requirements were duplicative because they sought information that applicants must provide in responding to the proposed selection criteria. That commenter recommended that we limit the application requirements to essential information that is not addressed by the selection criteria.

Discussion: The commenters are correct that several of the proposed application requirements sought narratives that applicants would have provided in responding to the proposed selection criteria. We proposed these application requirements in an effort to ensure that applicants provide this information so that reviewers can assess it in scoring the selection criteria. However, we acknowledge the concerns of the commenters that these proposed application requirements appear duplicative and are confusing rather than helpful.

Changes: We have revised four application requirements to remove requirements for narrative text that would be assessed by one or more of the selection criteria. The revisions we made in response to these comments are:

- In Application Requirement (b), Statement of Need for a Defined Target Population, we have removed the requirement that the applicant provide a narrative description of the target population. We have retained the requirement that the applicant complete Table 1 and specify the target population(s) for the pilot, including the range of ages of youth who will be served and the number of youth who will be served over the course of the pilot. We have also retitled the requirement "Target Population."
- In Application Requirement (d), Project Design, we have removed the requirement that the applicant submit a narrative that describes the project, the needs of the target population, the activities or changes in practice that will be implemented, why the requested flexibility is necessary to implement the pilot, how the requested flexibility will enable the applicant to implement changes in practice, and the proposed length of the pilot. We have retained the requirement that the applicant submit a logic model and, consequently, we have renamed Application Requirement (d) "Logic Model."
- We have deleted Application Requirement (e), Work Plan and Project Management.
- In Application Requirement (g), Budget and Budget Narrative (formerly Application Requirement (h)), we have revised the requirement to refer only to the budget and to require only the completion of Table 5. We have removed the requirement to provide a narrative regarding the amount and use of start-up funds, the proposed uses of funds named in Table 5, and the amount and sources of any non-Federal funds that may be used in the pilot. In addition, Table 5 has been revised to remove the rows that asked applicants to break out, for pilots proposed for multiple years, the amount and source of Federal funds that would be used in each calendar year of the project.

Comment: One commenter urged us to require applicants to provide evidence that the parties involved in the proposed project's implementation show evidence of prior collaboration through in-kind commitments, braided funding, or shared services.

Discussion: We decline to impose the recommended requirement because it would be duplicative. The extent to which partners in the proposed project have successfully collaborated to improve outcomes for disconnected youth in the past is among the factors assessed by Selection Criterion (e)(1).

Additionally, the recommended requirement is inappropriately prescriptive. To be effective, collaboration need not always involve in-kind commitments, braided funding, or shared services.

Changes: None.

Comment: One commenter commended us for giving applicants some flexibility in selecting the indicators and outcome measures that would be used to evaluate their projects, but suggested that we establish a small, common set of outcome measures that all pilots would use. The commenter recommended that we make placement and retention in school and/or placement and retention in employment required outcome measures for all pilots.

Discussion: As the commenter acknowledged, both the interventions implemented and the populations served can be diverse across P3 projects, making it difficult to identify appropriate indicators and outcome measures that should apply to all projects. We do see merit, however, in having a menu of indicators and outcome measures from which applicants may choose so that similar projects use common indicators and outcome measures, facilitating comparisons in performance across the P3 pilots.

Changes: We have added a menu of indicators and outcome measures to redesignated Application Requirement (f). Applicants may choose from this menu, or propose alternative indicators and outcome measures if they describe why those are more appropriate for their proposed projects. Applicants may propose additional measures and indicators that are not included among the options we identify, so long as they select at least one indicator and one outcome measure in the domain of education and at least one indicator and outcome measure in the domain of employment. Applicants may also propose additional measures and indicators outside of the education and employment domains such as well-being, including health, housing, recidivism, or other outcomes and are encouraged to do so where such outcomes are central to the proposed pilot.

Comments: None.

Discussion: One of the outcome measures we proposed in Application Requirement (f) was "community college completion." Upon further review, we determined that it would be more appropriate and inclusive to refer more generally to college completion so that pilots would have the option of measuring and setting targets for the completion of degree and certificate programs offered by four-year colleges and universities, as well as those offered by community colleges.

Changes: We substituted the phrase "college completion" for "community college completion" in Application Requirement (f).

Comment: None.

Discussion: Upon further review, we noted that the text of Application Requirement (b) did not conform to the headings in Table 1 in two instances. First, the text of Application Requirement (b) instructed applicants to include the "range of ages of youth" while the heading for column 2 in Table 1 was "age range." Second, the text of Application Requirement (b) instructed applicants to provide the "number of youth who will be served annually," while the header for column 3 in Table 1 was "Estimated Number of Youth Served Over the Course of the Pilot."

Changes: We revised the text of Application Requirement (b) so that it conforms to the headings of Table 1. We have substituted "age range" for "range of ages of youth" and "estimated number of youth served over the course of the pilot" for "number of youth who will be served annually."

Comments: None.

Discussion: In the NPP, the note accompanying Table 2 in Application Requirement (c)(1) (Federal requests for flexibility, including waivers) instructed applicants to indicate in the column for the name of grantee whether the grantee was a State, local, or tribal government. Upon further review, we determined that this note also should include a reference to non-governmental entities, if applicable. This change is appropriate because, while only State, local, or tribal governments may submit a P3 application, they may request waivers on behalf of non-governmental entities that are their partners in order to implement their pilots.

Changes: We have added "or non-governmental entity" to the note accompanying Table 2 in Application Requirement (c)(1).

Comments: None.

Discussion: Upon further review, we noted that Table 2 in Application Requirement (c)(1) (Federal requests for flexibility, including waivers) was titled "Requested Waivers." However, the requirement refers more generally to requests for flexibility, including waivers.

Changes: As a result, we have retitled Table 2 "Requested Flexibility."

Comments: None.

Discussion: Upon further review, we concluded that, for clarity, Table 5 in Application Requirement (g) should include a column that requests the name of the grantee that is the recipient of the specified funds and that the reference to "applicant or its partners" should be changed to "the grantee." These changes are important because the recipient of funds may not always be the applicant.

Changes: We have added to Table 5 in Application Requirement (g) a column that requests the name of the grantee that is the recipient of the specified funds and changed to reference to "applicants and its partners" to the "grantee."

Comment: None.

Discussion: Upon further review, we noted that the text of Application Requirement (g)(1)(A) was incomplete because it did not specify the content of the fifth and sixth columns in the accompanying Table 5.

Changes: We revised Application Requirement (g)(1)(A) to specify the information to be provided in these columns: the Federal fiscal year of the award (column 5) and whether the grant has already been awarded (column 6).

Comment: One commenter recommended that we impose a program requirement that would mandate that intake personnel or case workers involved in a P3 project seek to obtain a youth's school records, if feasible, to avoid spending unnecessary time and resources on assessing the youth's academic skills.

Discussion: We agree that projects should seek school records where feasible so that time and money are not wasted on unnecessary reassessments of youth's skills. However, we decline to mandate this practice because it would be inappropriately prescriptive for an initiative like P3 that seeks to increase State, local, and tribal flexibility to innovate. We also wish to avoid establishing detailed procedural requirements or other mandates for how projects must be carried out so that we can focus on assessing P3 projects on the basis of the outcomes they achieve for youth, rather than how they deliver services to youth.

Changes: None.

Comment: One commenter recommended that we require P3 projects to assess the career interests, aptitudes and goals of participants, as well as compel projects to offer work-based career assessment strategies as one option for such assessments.

Discussion: We agree that assessing the career interests, aptitudes, and goals of youth is worthwhile, but we decline to impose the mandate recommended by the commenter so that we can preserve the freedom of State, local, and tribal governments to innovate. We do not believe it is appropriate to compel applicants to provide particular types of services and interventions.

Changes: None.

Definitions:

Comment: Two commenters expressed support for our proposal to base the definition of English learner on the definition of "English language learner" found in section 203 of the Workforce Innovation and Opportunity Act (WIOA) (29 U.S.C. 3272(7)). However, one of these commenters noted that the WIOA section 203 definition requires English language learners to be "eligible individuals," which is defined by WIOA section 203(4) as individuals who are at least 16 years of age. This commenter urged us to affirm that the P3 definition of "English learner" includes youth as young as age 14.

Discussion: We acknowledge the support for the definition. The second commenter is correct that an individual must be 16 years of age to meet the WIOA section 203 definition of "English language learner." For this reason, we did not cross-reference the WIOA section 203 definition in our proposed definition of the term "English learner" for P3, choosing instead to adapt the definition so that it would be suitable for P3 and include youth as young as age 14.

Changes: None.

Comment: Two commenters expressed support for our proposal to define the term "homeless youth" using the definition found in section 725(2) of the McKinney-Vento Education for Homeless Children and Youth Act of 2001 (42 U.S.C. 11434a(2)).

Discussion: We acknowledge the commenters' support.

Changes: None.

Comment: None.

Discussion: Upon further review, we determined that the proposed definition of "braided funding" required revision. The definition we had originally proposed had indicated that braiding funds does not require a waiver. While this is true, it is possible that a waiver might facilitate a pilot's ability to braid funds, such as by aligning the eligibility requirements of two programs.

Changes: We have amended the definition of "braided funding" to clarify that waivers may be used to support more effective or efficient braiding of funds.

Comment: None.

Discussion: Upon further review, we determined that the proposed definition of "waiver" required revision. The definition we had originally proposed had indicated that a waiver provides relief from specific statutory, regulatory, or administrative requirements. In some instances, however, a waiver might waive a specific requirement in part, rather than eliminate it altogether. For example, a waiver could enable a pilot to increase the eligibility requirements of a program from 18 to 21 years old.

Changes: We have amended the definition of waiver to indicate that a waiver may waive specific statutory, regulatory, or administrative requirements in whole or in part.

Comment: None.

Discussion: Upon further review, we identified a typographical error in the first sentence of the proposed definition of "evidence-based intervention." The first sentence of this definition used the term "quasi-experimental studies." The correct term, which is defined in the Education Department General Administrative Regulations (34 CFR 77.1) is "quasi-experimental design studies."

Changes: We have changed the reference to "quasi-experimental studies" in the first sentence of the definition to "quasi-experimental design studies."

Comment: None.

Discussion: The NPP included a proposed definition for the term "evidence-based intervention," which was used in proposed Selection Criterion (c)(2). Since the publication of the NPP, the Every Student Succeeds Act (ESSA) (Pub. Law 114–95) was enacted into law. This Act, which authorizes most of the Department's elementary and secondary education programs, uses extensively the terms "evidence-based" and "evidence-based intervention." However, ESSA defines the term "evidence-based" differently than we had proposed to define the term "evidence-based intervention" in the NPP.

Change: To prevent confusion with the ESSA definition of the term "evidence-based," we have changed the term "evidence-based intervention" in the Definitions section and in Selection Criterion (c)(2) to "intervention based on evidence."

Selection Criteria:

Comment: Two commenters expressed concern that disaggregated outcome data are not readily available for some ELs and youth who are immigrants or refugees, including, particularly, outcome data by nativity and ethnicity for Asian Americans and Pacific Islanders (AAPIs). The commenters were concerned that applications that proposed to serve these populations would not score well under Selection Criterion (a), Need for Project, as a result.

Discussion: We acknowledge the commenters' concerns about the limited availability of data on AAPIs that is disaggregated by nativity and ethnicity, but we note that, in part due to the efforts of the White House Initiative on Asian Americans and Pacific Islanders, such data are becoming increasingly available. For example, the U.S. Department of Labor's Bureau of Labor Statistics now disaggregates Current Population Survey estimates on labor force participation, employment, and unemployment for seven Asian groups. However, we recognize that there may still be instances where disaggregated data are difficult to obtain.

Changes: We have added a sentence to the note accompanying Selection Criterion (a) clarifying that applicants may also refer to disaggregated data available through research, studies, or other sources that describe similarly situated populations as the one the applicant is targeting with its pilot.

Comment: None.

Discussion: Upon further review, we determined that it was necessary to clarify that Selection Criterion (a) does not require applicants to submit the needs assessment to which the criterion refers. Applicants need only present data from a needs assessment that was conducted or updated in the past three years; the needs assessment itself does not need to be provided.

Changes: We have added a note to accompany Selection Criterion (a) that indicates that applicants are not required to submit the needs assessment but that they should identify when the needs assessment was conducted or updated.

Comment: None.

Discussion: Upon further review, we determined that it was necessary to replace the term "a waiver" in Selection Criterion (b)(1) with the broader term "flexibility" in order to make the text of the criterion consistent with its title.

Changes: We have replaced the word "waiver" in Selection Criterion (b)(1) with the word "flexibility."

Comment: None.

Discussion: Upon further review, we determined that, for clarity, it was necessary to include in Selection Criterion (b)(1) and (2) cross-references to Table 2 because this is where an applicant identifies the requirements for which it is seeking flexibility.

Changes: We have revised Selection Criterion (b) (1) and (2) to include cross-references to Table 2.

Comment: None.

Discussion: As proposed in the NPP, Application Requirement (b) would have required that the needs assessment used to identify the needs of the target population to have been conducted or updated within the past three years. As discussed above, in response to public comment, we have removed some of the requirements from proposed Application Requirement (b) because much of the information it sought also must be provided to respond to Selection Criterion (a), Need for Project.

Changes: Because it is important that applicants provide recent data on the needs of the population(s) they propose to serve, we have revised Selection Criterion (a) to specify that the data provided in response to this selection criterion must be from a needs assessment conducted or updated within the past three years.

Comments: None.

Discussion: In the NPP, Selection Criterion (c) referred to the "Statement of Need section" and "Need for Flexibility section." Upon further review, we determined that it was not clear that these were cross-references to the applicant's responses to Selection Criteria (a) and (b), respectively.

Changes: We have revised Selection Criterion (c) to clarify that it refers to the applicant's responses to Selection Criteria (a) and (b).

Comment: None.

Discussion: Upon further review, we determined that it was necessary to revise Selection Criterion (c)(2) to clarify its meaning. As we had originally proposed it, this subcriterion was confusing with regard to the meaning of "evidence" and "base." Further, we determined that the subcriterion's reference to "relevant evidence" was unclear.

Changes: We have revised the subcriterion to eliminate the use of the word "base" as both a noun and a verb so that it now assesses "[t]he strength of the evidence supporting the pilot design, and whether the applicant proposes the effective use of interventions based on evidence and evidence-informed interventions (as defined in this notice)." We also revised the subcriterion to clarify that evidence is relevant if it informed the applicant's design.

Comment: None.

Discussion: Upon further review, we determined that, for clarity, it was necessary to revise Selection Criterion (f) (2) and (3) to indicate that the information evaluated by these two subcriteria appears in Table 4.

Changes: We have revised Selection Criterion (f) (2) and (3) to include cross-references to Table 4.

Comment: None.

Discussion: Upon further review, we found that Selection Criterion (g), Budget and Budget Narrative, may be confusing to applicants because the budget to which it refers is not clearly specified. The criterion could refer to the start-up grant funds requested by the applicant, the Federal funds that would be blended or braided in the proposed pilot, the non-Federal funds contributed by the applicant, or all of these sources of funds.

Changes: We have revised Selection Criterion (g) to indicate that its scope includes all of the funds that will be used by a pilot, including the start-up grant funds, blended and braided funds, and any non-Federal resources contributed by the applicant.

Final Priorities

Priority 1—Improving Outcomes for Disconnected Youth.

To meet this priority, an applicant must propose a pilot that is designed to improve outcomes for disconnected youth.

Priority 2—Improving Outcomes for Disconnected Youth in Rural Communities.

To meet this priority, an applicant must propose a pilot that is designed to improve outcomes for disconnected youth in one or more rural communities (as defined in this notice) only.

Priority 3—Improving Outcomes for Disconnected Youth in Tribal Communities.

To meet this priority, an applicant must (1) propose a pilot that is designed to improve outcomes for disconnected youth who are members of one or more State- or federally-recognized Indian tribal communities; and (2) represent a partnership that includes one or more State- or federally-recognized Indian tribes.

Priority 4—Improving Outcomes for Youth Who Are Unemployed and Out of School.

To meet this priority, an applicant must propose a pilot that—

(1) will serve disconnected youth who are neither employed nor enrolled in education and who face significant barriers to accessing education and employment; and

(2) is likely to result in significantly better educational or employment outcomes for such youth.

Priority 5—Improving Outcomes for Youth Who are English Learners.

To meet this priority, an applicant must propose a pilot that—

(1) will serve disconnected youth who are English learners (as defined in this notice); and

(2) is likely to result in significantly better educational or employment outcomes for such youth.

Priority 6—Improving Outcomes for Youth with a Disability.

To meet this priority, an applicant must propose a pilot that—

(1) will serve disconnected youth who are individuals with a disability (as defined in this notice); and

(2) is likely to result in significantly better educational or employment outcomes for such youth.

Priority 7—Improving Outcomes for Homeless Youth.

To meet this priority, an applicant must propose a pilot that—

(1) will serve disconnected youth who are homeless youth (as defined in this notice); and

(2) is likely to result in significantly better educational or employment outcomes for such youth.

Priority 8—Improving Outcomes for Youth in Foster Care.

To meet this priority, an applicant must propose a pilot that—

(1) will serve disconnected youth who are or have ever been in foster care; and

(2) is likely to result in significantly better educational or employment outcomes for such youth.

Priority 9—Improving Outcomes for Youth Involved in the Justice System.

To meet this priority, an applicant must propose a pilot that—

(1) will serve disconnected youth who are involved in the justice system; and

(2) is likely to result in significantly better educational or employment outcomes for such youth.

Priority 10—Improving Outcomes for Youth Who are Immigrants or Refugees.

To meet this priority, an applicant must propose a pilot that—

(1) will serve disconnected youth who are immigrants or refugees; and

(2) is likely to result in significantly better educational or employment outcomes for such youth.

Priority 11—Improving Outcomes for Youth Who are Pregnant or Parenting.

To meet this priority, an applicant must propose a pilot that—

(1) will serve disconnected youth who are pregnant or parenting; and

(2) is likely to result in significantly better educational or employment outcomes for such youth.

Priority 12—Work-Based Learning Opportunities.

To meet this priority, an applicant must propose a pilot that will provide all of the disconnected youth it proposes to serve with paid work-based learning opportunities, such as opportunities during the summer, which are integrated with academic and technical instruction.

Priority 13—Site-Specific Evaluation.

To meet this priority, an applicant must propose to conduct an independent evaluation of the impacts on disconnected youth of its overall program or specific components of its program that is a randomized controlled trial or a quasi-experimental design study. The extent to which an applicant meets this priority will be based on the clarity and feasibility of the applicant's proposed evaluation design, the appropriateness of the design to best capture key pilot outcomes, the prospective contribution of the evaluation to the knowledge base about serving disconnected youth (including the rigor of the design and the validity and generalizability of the findings), and the applicant's demonstrated expertise in planning and conducting a randomized controlled trial or quasi-experimental design study.

In order to meet this priority, an applicant also must include the following two documents as separate attachments to its application:

1. A Summary Evaluation Plan that describes how the pilot or a component of the pilot (such as a discrete service-delivery strategy) will be rigorously evaluated. The evaluation plan may not exceed eight pages. The plan must include the following:

- A brief description of the research question(s) proposed for study and an explanation of its/their relevance, including how the proposed evaluation will build on the research evidence base for the project as described in the application and how the evaluation findings will be used to improve program implementation;
- A description of the randomized controlled trial or quasi-experimental design study methodology, including the key outcome measures, the process for forming a comparison or control group, a justification for the target sample size and strategy for achieving it, and the approach to data collection (and sources) that minimizes both cost and potential attrition;
- A proposed evaluation timeline, including dates for submission of required interim and final reports;
- A description of how, to the extent feasible and consistent with applicable Federal, State, local, and tribal privacy requirements, evaluation data will be made available to other, third-party researchers after the project ends; and
- A plan for selecting and procuring the services of a qualified independent evaluator (as defined in this notice) prior to enrolling participants (or a description of how one was selected if agreements have already been reached). The applicant must describe how it will ensure that the qualified independent evaluator has the capacity and expertise to conduct the evaluation, including estimating the effort for the qualified independent evaluator. This estimate must include the time, expertise, and analysis needed to successfully complete the proposed evaluation.

2. A supplementary Evaluation Budget Narrative, which is separate from the overall application budget narrative and provides a description of the costs associated with funding the proposed program evaluation component, and an explanation of its funding source—*i.e.,* blended funding, start-up funding, State, local, or tribal government funding, or other funding (such as philanthropic). The budget must include a breakout of costs by evaluation activity (such as data collection and participant follow-up), and the applicant must describe a strategy for refining the budget after the services of an evaluator have been procured. The applicant must include travel costs for the qualified independent evaluator to attend at least one in-person conference in Washington, DC during the period of evaluation. All costs included in this supplementary budget narrative must be reasonable and appropriate to the project timeline and deliverables.

The Agencies will review the Summary Evaluation Plans and Evaluation Budget Narratives and provide feedback to applicants that are determined to have met the priority and that are selected as pilots. After award, these pilots must submit to the lead Federal agency a detailed evaluation plan of no more than 30 pages that relies heavily on the expertise of a qualified independent evaluator. The detailed evaluation plan must address the Agencies' feedback and expand on the Summary Evaluation Plan.

[Approved by the Office of Management and Budget under control number 1830–0575]

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Requirements

Application Requirements

The Assistant Secretary announces the following application requirements for this program. We may apply one or more of these requirements in any year in which this program is in effect.

(a) *Executive Summary.* The applicant must provide an executive summary that briefly describes the proposed pilot, the flexibilities being sought, and the interventions or systems changes that would be implemented by the applicant and its partners to improve outcomes for disconnected youth.

(b) *Target Population.* The applicant must complete Table 1, specifying the target population(s) for the pilot, including the age range of youth who will be served and the estimated number of youth who will be served over the course of the pilot.

TABLE 1—TARGET POPULATION

Target population	Age range	Estimated number of youth served over the course of the pilot

(c) *Flexibility, including waivers:*

1. *Federal requests for flexibility, including waivers.* For each program to be included in a pilot, the applicant must complete Table 2, Requested Flexibility. The applicant must identify two or more discretionary Federal programs that will be included in the pilot, at least one of which must be administered (in whole or in part) by a State, local, or tribal government.[9] In table 2, the applicant must identify one or more program requirements that would inhibit implementation of the pilot and request that the requirement(s) be waived in whole or in part. Examples of potential waiver requests and other requests for flexibility include, but are

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[9] Local governments that are requesting waivers of requirements in State-administered programs are strongly encouraged to consult with the State agencies that administer the programs in preparing their applications.

not limited to: blending of funds and changes to align eligibility requirements, allowable uses of funds, and performance reporting.

TABLE 2—REQUESTED FLEXIBILITY

Program name	Federal agency	Program requirements to be waived in whole or in part	Statutory or regulatory citation	Name of program grantee	Blending funds? (Yes/No)

Note: Please note in "Name of Program Grantee" if the grantee is a State, local, or tribal government, or non-governmental entity.

2. *Non-Federal flexibility, including waivers.* The applicant must provide written assurance that:

A. The State, local, or tribal government(s) with authority to grant any needed non-Federal flexibility, including waivers, has approved or will approve such flexibility within 60 days of an applicant's designation as a pilot finalist; [10] or

B. Non-Federal flexibility, including waivers, is not needed in order to successfully implement the pilot.

(d) *Logic Model.* The applicant must provide a graphic depiction (not longer than one page) of the pilot's logic model that illustrates the underlying theory of how the pilot's strategy will produce intended outcomes.

(e) *Partnership Capacity and Management.* The applicant must—

1. Identify the proposed partners, including any and all State, local, and tribal entities and non-governmental organizations that would be involved in implementation of the pilot, and describe their roles in the pilot's implementation using Table 3. Partnerships that cross programs and funding sources but are under the jurisdiction of a single agency or entity must identify the different sub-organizational units involved.

2. Provide a memorandum of understanding or letter of commitment signed by the executive leader or other accountable senior representative of each partner that describes each proposed partner's commitment, including its contribution of financial or in-kind resources (if any).

TABLE 3—PILOT PARTNERS

Partner	Type of organization (state agency, local agency, community-based organization, business)	Description of partner's role in the pilot

Note: Any grantees mentioned in Table 2 that are not the lead applicant must be included in Table 3.

(f) *Data and Performance Management Capacity.* The applicant must propose outcome measures and interim indicators to gauge pilot performance using Table 4. At least one outcome measure must be in the domain of education, and at least one outcome measure must be in the domain of employment. Applicants may specify additional employment and education outcome measures, as well as outcome measures in other domains of well-being, such as criminal justice, physical and mental health, and housing. Regardless of the outcome domain, applicants must identify at least one interim indicator for each proposed outcome measure. Applicants may apply one interim indicator to multiple outcome measures, if appropriate.

Examples of outcome measures and interim indicators follow. Applicants may choose from this menu or may propose alternative indicators and outcome measures if they describe why their alternatives are more appropriate for their proposed projects.

EDUCATION DOMAIN

Outcome measure	Interim indicator
High school diploma or equivalency attainment	• High school enrollment. • Reduction in chronic absenteeism. • Grade promotion. • Performance on standardized assessments. • Grade Point Average. • Credit accumulation.
College completion	• Enrollment. • Course attendance. • Credit accumulation. • Retention.

EMPLOYMENT DOMAIN

Outcome measure	Interim indicator
Sustained Employment	• Unsubsidized employment at time periods after exit from the program.

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[10] This includes, for example, for local governments, instances in which a waiver must be agreed upon by a State. It also includes instances in which waivers may only be requested by the State on the local government's behalf, such as waivers of the performance accountability requirements for local areas established in Title I of the Workforce Innovation and Opportunity Act.

EMPLOYMENT DOMAIN—Continued

Outcome measure	Interim indicator
	• Median earnings at time periods after exit from the program.

The specific outcome measures and interim indicators the applicant uses should be grounded in its logic model, and informed by applicable program results or research, as appropriate. Applicants must also indicate the source of the data, the proposed frequency of collection, and the methodology used to collect the data.

TABLE 4—OUTCOME MEASURES AND INTERIM INDICATORS

Domain	Outcome measure	Interim indicator(s)
Education:	Data Source: Frequency of Collection: Methodology:	Data Source: Frequency of Collection: Methodology:
Employment:	Data Source: Frequency of Collection: Methodology:	Data Source: Frequency of Collection: Methodology:
Other:	Data Source: Frequency of Collection: Methodology:	Data Source: Frequency of Collection: Methodology:

(g) *Budget and Budget Narrative.*

1. The applicant must complete Table 5 to provide the following budget information:

A. For each Federal program, the grantee, the amount of funds to be blended or braided (as defined in this notice), the percentage of total program funding received by the grantee that the amount to be blended or braided represents, the Federal fiscal year of the award, and whether the grant has already been awarded; and

B. The total amount of funds from all Federal programs that would be blended or braided under the pilot.

TABLE 5—FEDERAL FUNDS

Program name	Grantee	Amount of funds to be blended	Blended funds as a percentage of grantee's total award	Federal fiscal year of award	Grant already awarded? (Y/N)
TOTAL BLENDED					
Program name	Grantee	Amount of funds to be braided	Braided funds as a percentage of grantee's total award	Federal fiscal year of award	Grant already awarded? (Y/N)
TOTAL BRAIDED					

Note: Applicants may propose to expand the number of Federal programs supporting pilot activities using future funding beyond FY 2016, which may be included in pilots if Congress extends the P3 authority.

[Approved by the Office of Management and Budget under control number 1830–0575]

Program Requirements

The Assistant Secretary announces the following program requirements for this program. We may apply one or more of these requirements in any year in which this program is in effect.

(a) *National evaluation.* In addition to any site-specific evaluations that pilots may undertake, the Agencies may initiate a national P3 evaluation of the pilots selected in Round 2, as well as those selected in subsequent rounds.[11] Each P3 pilot must participate fully in any federally sponsored P3 evaluation activity, including the national evaluation of P3, which will consist of the analysis of participant characteristics and outcomes, an implementation analysis at all sites, and rigorous impact evaluations of promising interventions in selected sites. The applicant must acknowledge in writing its understanding of these requirements by submitting the form provided in Appendix A, "Evaluation Commitment Form," as an attachment to its application.

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[11] The initiation of any federally sponsored national P3 evaluation is dependent upon the availability of sufficient funds and resources.

[Approved by the Office of Management and Budget under control number 1830–0575]

(b) *Community of practice.* All P3 pilots must participate in a community of practice (as defined in this notice) that includes an annual in-person meeting of pilot sites (paid with grant funding that must be reflected in the pilot budget submitted) and virtual peer-to-peer learning activities. This commitment involves each pilot site working with the lead Federal agency on a plan for supporting its technical assistance needs, which can include learning activities supported by foundations or other non-Federal organizations as well as activities financed with Federal funds for the pilot.

(c) *Consent.* P3 pilots must secure necessary consent from parents, guardians, students, or youth program participants to access data for their pilots and any evaluations, in accordance with applicable Federal, State, local, and tribal laws. Applicants must explain how they propose to ensure compliance with Federal, State, local, and tribal privacy laws and regulations as pilot partners share data to support effective coordination of services and link data to track outcome measures and interim indicators at the individual level to perform, where applicable, a low-cost, high-quality evaluation.[12]

(d) *Performance agreement.* Each P3 pilot, along with other non-Federal government entities involved in the partnership, must enter into a performance agreement that will include, at a minimum, the following (as required by section 526(c)(2) of Division H of the 2014 Appropriations Act):

1. The length of the agreement;
2. The Federal programs and federally-funded services that are involved in the pilot;
3. The Federal discretionary funds that are being used in the pilot;
4. The non-Federal funds that are involved in the pilot, by source (which may include private funds as well as governmental funds) and by amount;
5. The State, local, or tribal programs that are involved in the pilot;
6. The populations to be served by the pilot;
7. The cost-effective Federal oversight procedures that will be used for the purpose of maintaining the necessary level of accountability for the use of the Federal discretionary funds;
8. The cost-effective State, local, or tribal oversight procedures that will be used for the purpose of maintaining the necessary level of accountability for the use of the Federal discretionary funds;
9. The outcome (or outcomes) that the pilot is designed to achieve;
10. The appropriate, reliable, and objective outcome-measurement methodology that will be used to determine whether the pilot is achieving, and has achieved, specified outcomes;
11. The statutory, regulatory, or administrative requirements related to Federal mandatory programs that are barriers to achieving improved outcomes of the pilot; and
12. Criteria for determining when a pilot is not achieving the specified outcomes that it is designed to achieve and subsequent steps, including:
    i. The consequences that will result; and
    ii. The corrective actions that will be taken in order to increase the likelihood that the pilot will achieve such specified outcomes.

Definitions

The Assistant Secretary announces the following definitions for this program. We may apply one or more of these definitions in any year in which this program is in effect.

Blended funding is a funding and resource allocation strategy that uses multiple existing funding streams to support a single initiative or strategy. Blended funding merges two or more funding streams, or portions of multiple funding streams, to produce greater efficiency and/or effectiveness. Funds from each individual stream lose their award-specific identity, and the blended funds together become subject to a single set of reporting and other requirements, consistent with the underlying purposes of the programs for which the funds were appropriated.

Braided funding is a funding and resource allocation strategy in which entities use existing funding streams to support unified initiatives in as flexible and integrated a manner as possible while still tracking and maintaining separate accountability for each funding stream. One or more entities may coordinate several funding sources, but each individual funding stream maintains its award-specific identity. Whereas blending funds typically requires one or more waivers of associated program requirements, braiding does not. However, waivers may be used to support more effective or efficient braiding of funds.

Community of practice means a group of pilots that agrees to interact regularly to solve persistent problems or improve practice in an area that is important to them and the success of their projects.

English learner means an individual who has limited ability in reading, writing, speaking, or comprehending the English language, and—

(A) Whose native language is a language other than English; or

(B) Who lives in a family or community environment where a language other than English is the dominant language.

Evidence-informed interventions bring together the best available research, professional expertise, and input from youth and families to identify and deliver services that have promise to achieve positive outcomes for youth, families, and communities.

Homeless youth has the same meaning as "homeless children and youths" in section 725(2) of the McKinney-Vento Education for Homeless Children and Youth Act of 2001 (42 U.S.C. 11434a(2)).

Individual with a disability means an individual with any disability as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).

An *interim indicator* is a marker of achievement that demonstrates progress toward an outcome and is measured at least annually.

Interventions based on evidence are approaches to prevention or treatment that are validated by documented scientific evidence from randomized controlled trials, or quasi-experimental design studies or correlational studies, and that show positive effects (for randomized controlled trials and quasi-experimental design studies) or favorable associations (for correlational studies) on the primary targeted outcomes for populations or settings similar to those of the proposed pilot. The best evidence to support an applicant's proposed reform(s) and target population will be based on one or more randomized controlled trials. The next best evidence will be studies using a quasi-experimental design. Correlational analysis may also be used as evidence to support an applicant's proposed reforms.

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[12] To the extent feasible and consistent with applicable privacy requirements, grantees must also ensure the data from their evaluations are made available to third-party researchers.

Outcomes are the intended results of a program, or intervention. They are what applicants expect their projects to achieve. An outcome can be measured at the participant level (for example, changes in employment retention or earnings of disconnected youth) or at the system level (for example, improved efficiency in program operations or administration).

A *qualified independent evaluator* is an individual who coordinates with the grantee and the lead Federal agency for the pilot, but works independently on the evaluation and has the capacity to carry out the evaluation, including, but not limited to: Prior experience conducting evaluations of similar design (for example, for randomized controlled trials, the evaluator will have successfully conducted a randomized controlled trial in the past); positive past performance on evaluations of a similar design, as evidenced by past performance reviews submitted from past clients directly to the awardee; lead staff with prior experience carrying out a similar evaluation; lead staff with minimum credential (such as a Ph.D. plus three years of experience conducting evaluations of a similar nature, or a Master's degree plus seven years of experience conducting evaluations of a similar nature); and adequate staff time to work on the evaluation.

A *rural community* is a community that is served only by one or more local educational agencies (LEAs) that are currently eligible under the Department of Education's Small, Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under the Elementary and Secondary Education Act of 1965 (ESEA), as amended, or includes only schools designated by the National Center for Education Statistics (NCES) with a locale code of 42 or 43.

A *waiver* provides flexibility in the form of relief, in whole or in part, from specific statutory, regulatory, or administrative requirements that have hindered the ability of a State, locality, or tribe to organize its programs and systems or provide services in ways that best meet the needs of its target populations. Under P3, waivers provide flexibility in exchange for a pilot's commitment to improve programmatic outcomes for disconnected youth consistent with underlying statutory authorities and purposes.

Selection Criteria

The Assistant Secretary announces the following selection criteria for evaluating an application under this program. We may apply one or more of these criteria in any year in which this program is in effect. In the notice inviting applications, the application package, or both we will announce the maximum possible points assigned to each criterion.

(a) *Need for Project.* In determining the need for the proposed project, we will consider the magnitude of the need of the target population, as evidenced by the applicant's analysis of data, including data from a comprehensive needs assessment conducted or updated in the past three years, using representative data on youth in the jurisdiction(s) proposing the pilot, that demonstrates how the target population lags behind other groups in achieving positive outcomes and the specific risk factors for this population.

Note: Applicants are encouraged to disaggregate these data according to relevant demographic factors such as race, ethnicity, gender, age, disability status, involvement in systems such as foster care or juvenile justice, status as pregnant or parenting, and other key factors selected by the applicant. If disaggregated data specific to the local population are not available, applicants may refer to disaggregated data available through research, studies, or other sources that describe similarly situated populations as the one the applicant is targeting with its pilot.

Note: Applicants do not need to include a copy of the needs assessment but should identify when it was conducted or updated.

(b) *Need for Requested Flexibility, Including Blending of Funds and Other Waivers.* In determining the need for the requested flexibility, including blending of funds and other waivers, we will consider:

1. The strength and clarity of the applicant's justification that each of the specified Federal requirements identified in Table 2 for which the applicant is seeking flexibility hinders implementation of the proposed pilot; and

2. The strength and quality of the applicant's justification of how each request for flexibility identified in Table 2 (*i.e.,* blending funds and waivers) will increase efficiency or access to services and produce significantly better outcomes for the target population(s).

(c) *Project Design.* In determining the strength of the project design, we will consider:

1. The strength and logic of the proposed project design in addressing the gaps and the disparities identified in the response to Selection Criterion (a) (Need for Project) and the barriers identified in the response to Selection Criterion (b) (Need for Requested Flexibility, Including Blending of Funds and Other Waivers). This includes the clarity of the applicant's plan and how the plan differs from current practices. Scoring will account for the strength of both the applicant's narrative and the logic model;

Note: The applicant's narrative should describe how the proposed project will use and coordinate resources, including building on participation in any complementary Federal initiatives or efforts.

2. The strength of the evidence supporting the pilot design and whether the applicant proposes the effective use of intervention based on evidence and evidence-informed interventions (as defined in this notice) as documented by citations to the relevant evidence that informed the applicant's design;

Note: Applicants should cite the studies on interventions and system reforms that informed their pilot design and explain the relevance of the cited evidence to the proposed project in terms of subject matter and evaluation evidence. Applicants proposing reforms on which there are not yet evaluations (such as innovations that have not been formally tested or tested only on a small scale) should document how evidence or practice knowledge informed the proposed pilot design.

3. The strength of the applicant's evidence that the project design, including any protections and safeguards that will be established, ensures that the consequences or impacts of the changes from current practices in serving youth through the proposed funding streams:

A. Will not result in denying or restricting the eligibility of individuals for services that (in whole or in part) are otherwise funded by these programs; and

B. Based on the best available information, will not otherwise adversely affect vulnerable populations that are the recipients of those services.

(d) *Work Plan and Project Management.* In determining the strength of the work plan and project management, we will consider the strength and completeness of the work plan and project management approach and their likelihood of achieving the objectives of the proposed project on time and within budget, based on—

1. Clearly defined and appropriate responsibilities, timelines, and milestones for accomplishing project tasks;

2. The qualifications of project personnel to ensure proper management of all project activities;

3. How any existing or anticipated barriers to implementation will be overcome.

Note: If the program manager or other key personnel are already on staff, the applicant should provide this person's resume or curriculum vitae.

Note: Evaluation activities may be included in the timelines provided as part of the work plan.

(e) *Partnership Capacity.* In determining the strength and capacity of the proposed pilot partnership, we will consider the following factors—

1. How well the applicant demonstrates that it has an effective governance structure in which partners that are necessary to implement the pilot successfully are represented and have the necessary authority, resources, expertise, and incentives to achieve the pilot's goals and resolve unforeseen issues, including by demonstrating the extent to which, and how, participating partners have successfully collaborated to improve outcomes for disconnected youth in the past;

2. How well the applicant demonstrates that its proposal was designed with substantive input from all relevant stakeholders, including disconnected youth and other community partners.

Note: Where the project design includes job training strategies, the extent of employer input and engagement in the identification of skills and competencies needed by employers, the development of the curriculum, and the offering of work-based learning opportunities, including pre-apprenticeship and registered apprenticeship, will be considered.

(f) *Data and Performance Management Capacity.* In determining the strength of the applicant's data and performance management capacity, we will consider the following factors—

1. The applicant's capacity to collect, analyze, and use data for decision-making, learning, continuous improvement, and accountability, and the strength of the applicant's plan to bridge any gaps in its ability to do so. This capacity includes the extent to which the applicant and partner organizations have tracked and shared data about program participants, services, and outcomes, including the execution of data-sharing agreements that comport with Federal, State, and other privacy laws and requirements, and will continue to do so;

2. How well the proposed outcome measures, interim indicators, and measurement methodologies specified in Table 4 of the application appropriately and sufficiently gauge results achieved for the target population under the pilot; and

3. How well the data sources specified in Table 4 of the application can be appropriately accessed and used to reliably measure the proposed outcome measures and interim indicators.

(g) *Budget and Budget Narrative.* In determining the adequacy of the resources that will be committed to support the project, we will consider the appropriateness of expenses within the budget with regards to cost and to implementing the pilot successfully. We will consider the entirety of funds the applicant will use to support its pilot including start-up grant funds, blended and braided funds included in Table 5, and non-Federal funds, including in-kind contributions.

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use one or more of these priorities, requirements, definitions, or selection criteria, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing these final priorities, requirements, definitions, and selection criteria only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

In this regulatory impact analysis we discuss the need for regulatory action, the potential costs and benefits, net budget impacts, assumptions, limitations, and data sources, as well as regulatory alternatives we considered. The potential costs of the final priorities requirements, definitions, and selection criteria are the costs associated with preparing an application. We estimate that each applicant would spend approximately 80 hours of staff time to address the final priorities, requirements, definitions, and selection criteria, prepare the application, and obtain necessary clearances. The total number of hours for all applicants will vary based on the number of applications. Based on the number of applications the Department received in response to the November 2014 notice inviting applications, we expect to receive approximately 55 applications. The total number of hours for all expected applicants is an estimated 4,400 hours. We estimate the total cost per hour of the staff who carry out this work to be $44.66 per hour, the mean hourly compensation cost for State and local government workers in September 2015. The total estimated cost for all applicants would be $196,504.

The potential benefits of the final priorities requirements, definitions, and selection criteria are that they would promote the efficient and effective use of the P3 authority. Implementation of these priorities, requirements, definitions, and selection criteria will help the Agencies identify pilots that will: (1) Serve disconnected youth with significant needs; (2) carry out effective reforms and interventions; and (3) be managed by strong partnerships with the capacity to collect, analyze, and use data for decision-making, learning, continuous improvement, and accountability.

Paperwork Reduction Act of 1995: The Paperwork Reduction Act of 1995 (PRA) does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control number assigned to the collections of information in this NFP at the end of the affected priorities and requirements.

Priority 13 (Site-Specific Evaluation), Application Requirements (a) through (g), and Program Requirement (a) (National evaluation) contain information collection requirements. Under PRA, the Department has submitted a copy of these sections to OMB, as well as the related Information Collection Request (ICR) (the application package), for its review and approval. In accordance with the PRA, the OMB Control number associated with these collections of information and the related ICR is OMB Control number 1830–0575. OMB approval of these collections of information and the related ICR is expected at the time of publication of the NFP.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* Braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Johan E. Uvin,

Deputy Assistant Secretary, Delegated the Duties of Assistant Secretary for Career, Technical, and Adult Education.

Appendix A: Evaluation Commitment Form

An authorized executive of the lead applicant and all other partners, including State, local, tribal, and non-governmental organizations that would be involved in the pilot's implementation, must sign this form and submit it as an attachment to the grant application. The form is not considered in the recommended application page limit.

Commitment To Participate in Required Evaluation Activities

As the lead applicant or a partner proposing to implement a Performance Partnership Pilot through a Federal grant, I/we agree to carry out the following activities, which are considered evaluation requirements applicable to all pilots:

Facilitate Data Collection: I/we understand that the award of this grant requires me/us to facilitate the collection and/or transmission of data for evaluation and performance monitoring purposes to the lead Federal agency and/or its national evaluator in accordance with applicable Federal, State, and local, and tribal laws, including privacy laws.

The type of data that will be collected includes, but is not limited to, the following:

- Demographic information, including participants' gender, race, age, school status, and employment status;
- Information on the services that participants receive; and
- Outcome measures and interim outcome indicators, linked at the individual level, which will be used to measure the effects of the pilots.

The lead Federal agency will provide more details to grantees on the data items required for performance and evaluation after grants have been awarded.

Participate in Evaluation: I/we understand that participation and full cooperation in the national evaluation of the Performance Partnership Pilot is a condition of this grant award. I/we understand that the national evaluation will include an implementation systems analysis and, for certain sites as appropriate, may also include an impact evaluation. My/our participation will include facilitating site visits and interviews; collaborating in study procedures, including random assignment, if necessary; and transmitting data that are needed for the evaluation of participants in the study sample, including those who may be in a control group.

Participate in Random Assignment: I/we agree that if our Performance Partnership Pilot or certain activities in the Pilot is selected for an impact evaluation as part of the national evaluation, it may be necessary to select participants for admission to Performance Partnership Pilot by a random lottery, using procedures established by the evaluator.

Secure Consent: I/we agree to include a consent form for, as appropriate, parents/guardians and students/participants in the application or enrollment packet for all youth in organizations implementing the Performance Partnership Pilot consistent with any Federal, State, local, and tribal laws that apply. The parental/participant consent forms will be collected prior to the acceptance of participants into Performance Partnership Pilot and before sharing data with the evaluator for the purpose of evaluating the Performance Partnership Pilot.

SIGNATURES

Lead Applicant
Print Name ____________________
Signature ____________________
Organization ____________________

Date ____________________

Partner ____________________
Print Name ____________________
Signature ____________________
Organization ____________________
Date ____________________

Partner ____________________
Print Name ____________________
Signature ____________________
Organization ____________________
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Partner ____________________
Print Name ____________________
Signature ____________________
Organization ____________________
Date ____________________

[Approved by the Office of Management and Budget under control number 1830–0575]

[FR Doc. 2016–09749 Filed 4–27–16; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2015–0152; FRL–9945–60–Region 4]

Air Quality Plans; Georgia; Infrastructure Requirements for the 2010 Sulfur Dioxide National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve portions of the State Implementation Plan (SIP) submission, submitted by the State of Georgia, through the Georgia Department of Natural Resources (DNR), Environmental Protection Division (EPD), on October 22, 2013, and supplemented on July 25, 2014, for inclusion into the Georgia SIP. This final action pertains to the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2010 1-hour sulfur dioxide (SO_2) national ambient air quality standard (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an "infrastructure SIP submission." The EPD certified that the Georgia SIP contains provisions that ensure the 2010 1-hour SO_2 NAAQS is implemented, enforced, and maintained in Georgia. EPA has determined that portions of the Georgia infrastructure SIP submission, provided to EPA on October 22, 2013, and supplemented on July 25, 2014, satisfies the certain required infrastructure elements for the 2010 1-hour SO_2 NAAQS.

DATES: This rule will be effective May 31, 2016.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2015–0152. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michele Notarianni, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Notarianni can be reached via electronic mail at *notarianni.michele@epa.gov* or via telephone at (404) 562–9031.

SUPPLEMENTARY INFORMATION:

I. Background and Overview

On June 22, 2010 (75 FR 35520), EPA revised the primary SO_2 NAAQS to an hourly standard of 75 parts per billion (ppb) based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 2010 1-hour SO_2 NAAQS to EPA no later than June 2, 2013.[1]

In a proposed rulemaking published on February 5, 2016, EPA proposed to approve Georgia's 2010 1-hour SO_2 NAAQS infrastructure SIP submission submitted on October 22, 2013, as supplemented on July 25, 2014, with the exception of the interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1, 2, and 4), for which EPA did not propose any action.[2] FR 6200. The details of Georgia's submission and the rationale for EPA's actions are explained in the proposed rulemaking. Comments on the proposed rulemaking were due on or before March 7, 2016. EPA received no adverse comments on the proposed action.

II. Final Action

With the exception of interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states and visibility protection requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1, 2, and 4), EPA is taking final action to approve Georgia's infrastructure submission submitted on October 22, 2013, and supplemented on July 25, 2014, for the 2010 1-hour SO_2 NAAQS. EPA is taking final action to approve Georgia's infrastructure SIP submission for the 2010 1-hour SO_2 NAAQS because the submission is consistent with section 110 of the CAA.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions,

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[1] Today, EPA is providing clarification for an inadvertent typographical error that was included in the February 5, 2016, proposed rulemaking, for this final action. In the February 5, 2016, proposed rulemaking it was stated that the 2010 1-hour SO_2 NAAQS infrastructure SIPs were due no later than June 22, 2013. The 2010 1-hour SO_2 NAAQS infrastructure SIPs were actually due to EPA from states no later than June 2, 2013.

[2] Georgia's 2010 1-hour SO_2 NAAQS infrastructure SIP submission dated October 22, 2013, and supplemented on July 25, 2014, is also collectively referred to as "Georgia's SO_2 infrastructure SIP" in this action.

EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 27, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: April 14, 2016.

Heather McTeer Toney,

Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart L—Georgia

■ 2. Section 52.570(e), is amended by adding an entry for "110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour SO_2 National Ambient Air Quality Standard" at the end of the table to read as follows:

§ 52.570 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED GEORGIA NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
* *	*	*	*	* *
110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour SO_2 National Ambient Air Quality Standard.	Georgia	10/22/2013	4/28/2016 [Insert citation of publication].	With the exception of interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1, 2, and 4).

[FR Doc. 2016–09861 Filed 4–27–16; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 81, No. 82
Thursday, April 28, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–5598; Directorate Identifier 2016–NM–001–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2012–22–02, which applies to certain The Boeing Company Model 747–400, –400D, and –400F series airplanes. AD 2012–22–02 currently requires measuring the web at station (STA) 320 and, depending on findings, various inspections for cracks and missing fasteners, web and fastener replacement, and related investigative and corrective actions if necessary. Since we issued AD 2012–22–02, it was determined that there were no inspection or repair procedures included for airplanes with a STA 320 crown frame web thickness less than 0.078 inch, or greater than or equal to 0.084 inch and less than or equal to 0.135 inch. This proposed AD would require, for certain airplanes, replacement of the web, including related investigative and corrective actions if necessary. We are issuing this AD to prevent complete fracture of the crown frame assembly, and consequent damage to the skin. Such damage could result in in-flight decompression of the airplane.

DATES: We must receive comments on this proposed AD by June 13, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5598.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5598; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Bill Ashforth, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6432; fax: 425–917–6590; email: *Bill.Ashforth@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–5598; Directorate Identifier 2016–NM–001–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On October 19, 2012, we issued AD 2012–22–02, Amendment 39–17238 (77 FR 69739, November 21, 2012) ("AD 2012–22–02"), for certain The Boeing Company Model 747–400, –400D, and –400F series airplanes. AD 2012–22–02 requires measuring the web at STA 320 and, depending on findings, various inspections for cracks and missing fasteners, web and fastener replacement, and related investigative and corrective actions if necessary. AD 2012–22–02 resulted from reports of crown frame web cracking at left buttock line (LBL) 15.0, STA 320. We issued AD 2012–22–02 to prevent complete fracture of the crown frame assembly, and consequent damage to the skin and in-flight decompression of the airplane.

Actions Since AD 2012–22–02 Was Issued

Since we issued AD 2012–22–02, it was determined that there was no work included for airplanes with a STA 320 crown frame web thickness less than 0.078 inch, or greater than or equal to 0.084 inch and less than or equal to 0.135 inch.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015. The service information describes procedures for various inspections for cracks and missing fasteners, web and fastener replacement, and related investigative and corrective actions, if necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2012–22–02, this proposed AD would retain certain requirements of AD 2012–22–02. Those requirements are referenced in the service information identified previously, which, in turn, is referenced in paragraphs (h), (i), and (k) of this proposed AD. This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between the Proposed AD and the Service Information."

For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5598.

The phrase "related investigative actions" is used in this proposed AD. Related investigative actions are follow-on actions that (1) are related to the primary action, and (2) further investigate the nature of any condition found. Related investigative actions in an AD could include, for example, inspections.

The phrase "corrective actions" is used in this proposed AD. Corrective actions correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Differences Between This Proposed AD and the Service Information

For Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015, Table 4: STA 320 Post Web Replacement Inspection of paragraph 1.E., "Compliance," the conditional action statement does not include airplanes that were inspected or repaired in accordance with Part 8 of the Work Instructions. The statement should read: "All airplanes that have done the STA 320 crown frame web replacement in accordance with paragraph 3.B. WORK INSTRUCTIONS, PARTS 5 OR PART 8." Paragraph (k) of this proposed AD applies to all airplanes on which a web replacement is done as required by paragraphs (h), (i), and (j) of the proposed AD, *e.g.*, the replacement is done as specified in Part 5 or Part 8 of paragraph 3.B., "Work Instructions," of the service information.

Costs of Compliance

We estimate that this proposed AD affects 29 airplanes.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Measurement, inspection, and web replacement. [retained actions from AD 2012-22-02].	219 work-hours × $85 per hour = $18,615.	Up to $21,887	Up to $40,502 per inspection and replacement.	$Up to 1,174,558.
Post-replacement inspection [retained actions from AD 2012-22-02].	135 work-hours × $85 per hour = $11,475 per inspection cycle.	$0	$11,475 per inspection cycle	$332,775 per inspection cycle.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska and,

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2012–22–02, Amendment 39–17238 (77 FR 69739 November 21, 2012), and adding the following new AD:

The Boeing Company: Docket No. FAA–2016–5598; Directorate Identifier 2016–NM–001–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by June 13, 2016.

(b) Affected ADs

This AD replaces AD 2012–22–02, Amendment 39–17238 (77 FR 69739, November 21, 2012) ("AD 2012–22–02").

(c) Applicability

This AD applies to The Boeing Company Model 747–400, –400D, and –400F series airplanes, certificated in any category, as specified in Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by reports of crown frame web cracking at left buttock line (LBL) 15.0, station (STA) 320 and a determination that there were no inspection or repair procedures included in AD 2012–22–02 for airplanes with a STA 320 crown frame web thickness less than 0.078 inch, or greater than or equal to 0.084 inch and less than or equal to 0.135 inch. We are issuing this AD to prevent complete fracture of the crown frame assembly, and consequent damage to the skin. Such damage could result in in-flight decompression of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Crown Frame Web Measurement for Certain Airplanes

For Group 1, Configuration 3 airplanes identified in Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015: At the compliance time specified in Table 1 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015, measure the thickness of the crown frame web at STA 320, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015, except as required by paragraph (l)(2) of this AD. Do all related investigative and corrective actions at the applicable times specified in Table 2 and Table 3 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015.

(h) Inspections (Web With No Repair Doubler) and Related Investigative and Corrective Actions (Including Web Replacement)

For Group 1, Configuration 1 airplanes identified in Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015: For airplanes with a web thickness less than 0.136 inch and no repair doubler installed on the web, at the time specified in Table 2 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015, do a detailed inspection for cracks and a general visual inspection for missing fasteners of the crown frame web at STA 320; and do all applicable related investigative and corrective actions; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015, except as specified in paragraph (l)(2) of this AD. Do the applicable related investigative and corrective actions at the applicable times specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015.

(i) Inspection (Web With Repair Doubler) and Related Investigative and Corrective Actions (Including Web Replacement)

For Group 1, Configuration 1 airplanes identified in Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015: For airplanes with a web thickness less than 0.136 inch and a repair doubler installed on the web, at the time specified in Table 3 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015, do a detailed inspection for any crack in the upper chord and lower chord of the STA 320 crown frame; and do all applicable related investigative and corrective actions; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015, except as specified in paragraph (l)(2) of this AD. Do the applicable related investigative and corrective actions at the applicable times specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015. At the applicable compliance time specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015, except as provided by paragraph (l)(1) of this AD, do the actions specified in paragraphs (i)(1) and (i)(2) of this AD, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015, except as required by paragraph (l)(2) of this AD. Do all applicable corrective actions before further flight.

(1) Replace the web with a new web and do all applicable related investigative actions.

(2) Do a detailed inspection for cracks in the upper or lower chord of the crown frame web at STA 320.

(j) Web Replacement for Certain Airplanes

For Group 1, Configuration 2 airplanes identified in Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015: At the applicable time specified in Table 5 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015, except as provided by paragraph (l)(1) of this AD, replace the web, including doing related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015, except as required by paragraph (l)(2) of this AD. Do all applicable related investigative and corrective actions before further flight.

(k) Post-Replacement Repetitive Inspections of Replaced Web

Following any web replacement required by this AD, at the time specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015: Do a detailed inspection for cracks of the web, upper chord, lower chord, and lower chord splice, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015, except as required by paragraph (l)(2) of this AD. Do all applicable corrective actions before further flight. If no crack is found, repeat the inspection thereafter at the intervals specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015. Accomplishment of the inspections required by AD 2009–19–05, Amendment 39–16022 (74 FR 48138, September 22, 2009), terminates the requirements of this paragraph.

(l) Exceptions to the Service Information With Updated Service Information

(1) Where Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015, specifies a compliance time "after the Revision 2 date of the service bulletin," this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Where Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015, specifies to contact Boeing for appropriate action, accomplish applicable actions before further flight using a method approved in accordance with the procedures specified in paragraph (n) of this AD.

(m) Credit for Previous Actions

(1) This paragraph provides credit for the actions required by paragraphs (h), (i), and (k) of this AD, if those actions were performed before December 26, 2012 (the effective date of AD 2012–22–02), using Boeing Service Bulletin 747–53A2784, dated August 27, 2009, which is not incorporated by reference in this AD.

(2) This paragraph provides credit for the actions required by paragraphs (h), (i), and (k) of this AD, if those actions were performed before the effective date of this AD using Boeing Service Bulletin 747–53A2784, Revision 1, dated September 14, 2011.

(n) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (o) of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization

Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(o) Related Information

(1) For more information about this AD, contact Bill Ashforth, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6432; fax: 425–91–6590; email: *Bill.Ashforth@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on April 15, 2016.

Victor Wicklund,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–09647 Filed 4–27–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–5597; Directorate Identifier 2016–NM–009–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all The Boeing Company Model 737–400 series airplanes. This proposed AD was prompted by reports of cracks in the upper chord of the overwing stub beams at body station (STA) 578 emanating from the rivet location common to the crease beam inner chord and the overwing stub beam upper chord. This proposed AD would require repetitive inspections for cracking, and related investigative and corrective actions if necessary. Replacement of the overwing stub beam would terminate the repetitive inspections for cracking at the replacement location only, and post-replacement inspections would be required if the replacement was done. We are proposing this AD to detect and correct cracking in the upper chord of the overwing stub beam caused by high flight cycle fatigue stresses from both pressurization and maneuver loads. Cracking of the overwing stub beam could adversely affect the fuselage structural integrity and result in possible decompression of the airplane.

DATES: We must receive comments on this proposed AD by June 13, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5597.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5597; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Wade Sullivan, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6430; fax: 425–917–6590; email: *wade.sullivan@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–5597; Directorate Identifier 2016–NM–009–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We have received ten reports from four operators of cracks in the upper chord of the overwing stub beams at body STA 578 emanating from the rivet location common to the crease beam inner chord and the overwing stub beam upper chord on The Boeing Company Model 737–400 series airplanes. The earliest reported crack in an overwing stub beam upper chord occurred on an airplane with 31,843 total flight cycles. Seven airplanes had a severed overwing stub beam upper chord on either the left or right side, and two airplanes had severed overwing stub beam upper chords on the left and right sides. Cracks in the upper chord of the overwing stub beams, if not corrected, could result in high flight cycle fatigue stresses from both pressurization and maneuver loads, which can cause cracking in the upper chord of the overwing stub beam at STA 559, STA 578, and STA 601. Cracking of the overwing stub beam could adversely affect the fuselage structural integrity and result in possible decompression of the airplane.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 737–53A1347, dated December 9, 2015. The service information describes procedures for doing a surface high frequency eddy current inspection for cracking in the overwing stub beam upper chord at STA 559, STA 578, and STA 601, and repairs and replacement. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between this Proposed AD and the Service Information." For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5597.

The phrase "related investigative actions" is used in this proposed AD. "Related investigative actions" are follow-on actions that (1) are related to the primary action, and (2) further investigate the nature of any condition found. Related investigative actions in an AD could include, for example, inspections.

The phrase "corrective actions" is used in this proposed AD. "Corrective actions" correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Differences Between This Proposed AD and the Service Information

Boeing Alert Service Bulletin 737–53A1347, dated December 9, 2015, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Costs of Compliance

We estimate that this proposed AD affects 93 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	24 work-hours × $85 per hour = $2,040 per inspection cycle.	$0	$2,040 per inspection cycle.	$189,720 per inspection cycle

We estimate the following costs to do any necessary inspections/replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these inspections/replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Related investigative inspection	9 work-hours × $85 per hour = $765 per side	$0	$765 per side.
STA 578 Replacement	41 work-hours × $85 per hour=$3,485 per side ...	$41,500 per side ...	$44,985 per side.
STA 578 Post-replacement inspection	1 work-hour × $85 per hour = $85 per side	$0	$85 per side.

We have received no definitive data that would enable us to provide cost estimates for certain on-condition actions specified in this proposed AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

The Boeing Company: Docket No. FAA–2016–5597; Directorate Identifier 2016–NM–009–AD.

(a) Comments Due Date

We must receive comments by June 13, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all the Boeing Company Model 737–400 series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by reports of cracks in the upper chord of the overwing stub beams at body station (STA) 578 emanating from the rivet location common to the crease beam inner chord and the overwing stub beam upper chord. We are issuing this AD to detect and correct cracking in the upper chord of the overwing stub beam caused by high flight cycle fatigue stresses from both pressurization and maneuver loads. Cracking of the overwing stub beam could adversely affect the fuselage structural integrity and result in possible decompression of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspections, Related Investigative Actions, and Corrective Actions

At the applicable time specified in table 1 in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–53A1347, dated December 9, 2015, except as required by paragraphs (j)(1) and (j)(2) of this AD: Do a surface high frequency eddy current (HFEC) inspection for any cracking in the overwing stub beam upper chord at STA 559, STA 578, and STA 601; and do all applicable related investigative and corrective actions; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1347, dated December 9, 2015, except as specified in paragraph (j)(3) of this AD. Do all applicable related investigative and corrective actions before further flight. Repeat the HFEC inspection thereafter at the applicable intervals specified Boeing Alert Service Bulletin 737–53A1347, dated December 9, 2015.

Note 1 to paragraph (g) of this AD: Deviation from the actions specified in Boeing Alert Service Bulletin 737–53A1347, dated December 9, 2015, may affect compliance with the fuel tank ignition prevention requirements specified in Critical Design Configuration Control Limitation 28–AWL–11 of Document D6–38278–CMR.

(h) Terminating Action

Replacement of the overwing stub beam in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1347, dated December 9, 2015, terminates the repetitive inspections required by paragraph (g) of this AD at the STA 578 replacement location only. The post-replacement inspections required by paragraph (i) of this AD are still required at the STA 578 replacement location.

(i) Post-Replacement Inspections and Corrective Action

For airplanes on which an overwing stub beam has been replaced at STA 578: At the applicable time specified in table 2 in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–53A1347, dated December 9, 2015: Do a surface HFEC inspection for any cracking in the overwing stub beam upper chord at STA 578, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1347, dated December 9, 2015. Repeat the HFEC inspection thereafter at the applicable intervals specified Boeing Alert Service Bulletin 737–53A1347, dated December 9, 2015. If any cracking is found during any inspection required by this paragraph, before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (j)(3) of this AD.

(j) Exceptions to Service Information

(1) Where Boeing Alert Service Bulletin 737–53A1347, dated December 9, 2015, specifies a compliance time after the "original issue date of this service bulletin," this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) The Condition column of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–53A1347, dated December 9, 2015, refers to airplanes with specified total flight cycles "at the original issue date of this service bulletin." This AD, however, applies to the airplanes with the specified total flight cycles as of the effective date of this AD.

(3) If any cracking is found during any inspection required by this AD, and Boeing Alert Service Bulletin 737–53A1347, dated December 9, 2015, specifies to contact Boeing for appropriate action: Before further flight, repair the cracking or replace the stub beam, using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(k) No Economic Inspection Required

This AD does not require the "Recommended Economic Inspection" specified in paragraph 3.B.3. of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1347, dated December 9, 2015.

(l) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (m)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) Except as required by paragraph (j)(3) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (l)(4)(i) and (l)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(m) Related Information

(1) For more information about this AD, contact Wade Sullivan, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6430; fax: 425–917–6590; email: *wade.sullivan@faa.gov*.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com*. You

may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on April 15, 2016.

Victor Wicklund,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–09643 Filed 4–27–16; 8:45 am]

BILLING CODE 4910–13–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4007

RIN 1212–AB32

Payment of Premiums; Late Payment Penalty Relief

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) proposes to lower the rates of penalty charged for late payment of premiums by all plans, and to provide a waiver of most of the penalty for plans with a demonstrated commitment to premium compliance. PBGC seeks public comment on its proposal.

DATES: Comments must be submitted on or before June 27, 2016.

ADDRESSES: Comments, identified by Regulation Identifier Number (RIN) 1212–AB32, may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the Web site instructions for submitting comments.
- *Email: reg.comments@pbgc.gov.*
- *Fax:* 202–326–4112.
- *Mail or Hand Delivery:* Regulatory Affairs Group, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

All submissions must include the Regulation Identifier Number for this rulemaking (RIN 1212–AB32). Comments received, including personal information provided, will be posted to *www.pbgc.gov.* Copies of comments may also be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026, or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Deputy Assistant General Counsel for Regulatory Affairs (*murphy.deborah@pbgc.gov*), Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026; 202–326–4024. (TTY and TDD users may call the Federal relay service toll-free at 800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of the Regulatory Action

This proposed rule is needed to reduce the financial burden of PBGC's late premium penalties. The rulemaking would reduce penalty rates for all plans and waive most of the penalty for plans that meet a standard for good compliance with premium requirements.

PBGC's legal authority for this action comes from section 4002(b)(3) of the Employee Retirement Income Security Act of 1974 (ERISA), which authorizes PBGC to issue regulations to carry out the purposes of title IV of ERISA, and section 4007 of ERISA, which gives PBGC authority to assess late payment penalties.

Major Provisions of the Regulatory Action

The penalty for late payment of a premium is a percentage of the amount paid late multiplied by the number of full or partial months the amount is late, subject to a floor of $25 (or the amount of premium paid late, if less). There are currently two levels of penalty: 1 Percent per month (with a 50 percent cap) and 5 percent per month (capped at 100 percent). The lower rate applies to "self-correction"—that is, where the premium underpayment is corrected before PBGC gives notice that there is or may be an underpayment. This proposed rule would cut the rates and caps in half (to ½ percent with a 25 percent cap and 2½ percent with a 50 percent cap, respectively) and eliminate the floor.

The rulemaking would also create a new penalty waiver that would apply to underpayments by plans with good compliance histories if corrected promptly after notice from PBGC. Under the proposal, PBGC would waive 80 percent of the penalty otherwise applicable to such a plan. Thus, the penalty would be reduced from 2½ percent per month (with a 50 percent cap) to ½ percent per month (with a 25 percent cap)—the same result as if the plan had self-corrected.

Background

PBGC administers the pension plan termination insurance program under title IV of the Employee Retirement Income Security Act of 1974 (ERISA). Under ERISA sections 4006 and 4007, plans covered by title IV must pay premiums to PBGC. PBGC's premium regulations—on Premium Rates (29 CFR part 4006) and on Payment of Premiums (29 CFR part 4007)—implement ERISA sections 4006 and 4007.

ERISA section 4007(b)(1) provides that if a premium is not paid when due, PBGC is authorized to assess a penalty up to 100 percent of the overdue amount. The statute does not condition exercise of this authority on a finding of bad faith or lack of due care; it is solely based on the failure to pay.[1] However, the fact that assessment is authorized (rather than mandated)—and thus that PBGC could choose not to exercise the authority at all—indicates that PBGC has the flexibility to assess less than the full amount of penalty authorized and to reduce or eliminate a penalty.[2]

PBGC has provided for the exercise of its authority to impose penalties in the premium payment regulation. Under § 4007.8 of the regulation, late payment penalties accrue at the rate of 1 percent or 5 percent per month (or portion of a month) of the unpaid amount, except that the smallest penalty assessed is the lesser of $25 or the amount of unpaid premium. Whether the 1-percent or 5-percent rate applies depends on whether the underpayment is "self-corrected" or not. Self-correction refers to payment of the delinquent amount before PBGC gives written notice of a possible delinquency. One-percent penalties are capped by the regulation at 50 percent and 5-percent penalties at 100 percent of the unpaid amount. Thus, although penalties can be significant in some cases, they are generally assessed in amounts far less than the statutory maximum.

This two-tiered structure provides an incentive to self-correct and reflects PBGC's judgment that those that come forward voluntarily to correct underpayments deserve more forbearance than those that PBGC identifies through its premium enforcement programs.

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[1] The statute provides a waiver of penalty for 60 days if PBGC finds that timely payment would cause substantial hardship, but PBGC may not grant the waiver if it appears that the plan will be unable to pay the premium within 60 days. PBGC has found no record that such a waiver has ever been granted during the agency's 40+ years of existence.

[2] In contrast, the statute requires that interest on late premiums "shall be paid" at a specified rate for the overdue period.

The premium payment regulation and its appendix also authorize waivers of late premium payment penalties. For example, § 4007.8(f) provides an automatic waiver for cases where premiums are not more than seven days late. The regulation and appendix also provide for waivers based on facts and circumstances and give detailed guidance about some specific grounds for waivers, such as where there is reasonable cause for the late payment.[3] PBGC may also waive penalties where it finds that there are other appropriate circumstances.[4]

Proposal

PBGC proposes to reduce penalty rates for late payment of annual (flat- and variable-rate) premiums and create a new automatic waiver of 80 percent of the higher penalty rate for plans that demonstrate good compliance.[5] These changes would in effect make the penalty rate for these compliant plans the same as the lower "self-correction" penalty rate. (PBGC also proposes to make two minor wording changes in the premium payment regulation.) PBGC seeks public comment on its proposal.

Penalty Rates

Over the years—especially in recent years—Congress has significantly increased PBGC premium rates. Since late payment penalties are a percentage of unpaid premium, the penalties have gone up in proportion to the increase in premiums. While it is not unfair to impose larger penalties for late payment of larger amounts, PBGC is sensitive to the fact that a penalty assessed today may be several times what would have been assessed years ago for the same acts or omissions involving a plan with the same number of participants and the same unfunded vested benefits.

PBGC has good reason to believe that smaller penalties will provide an adequate incentive for compliance by premium payers. PBGC's experience has been that compliance with the premium payment requirements is influenced primarily by the consistency of PBGC's penalty assessment activities, and only secondarily by the size of penalties assessed. PBGC observes that in most cases, a late payment is inadvertent and that assessment of a penalty sparks improvement of a plan's compliance systems whether the penalty is large or small. This experience supports the conclusion that if PBGC continues its current consistent enforcement efforts, assessing significantly lower penalties will yield a satisfactory level of compliance.

Accordingly, PBGC is proposing to cut penalty rates and caps in half, so that the lower (self-correction) rate would be ½ percent with a 25 percent cap, and the higher rate would be 2½ percent with a 50 percent cap. PBGC also proposes to eliminate the floor on penalty assessments, so that if the penalty assessment formula generates a penalty less than $25, it will not be automatically inflated to the floor amount.

Partial Waiver for Good Premium Compliance

Applying a lower penalty rate to self-correction recognizes that it is desirable for a plan to catch and fix its own mistakes, whatever its compliance history may be. PBGC has given this matter further thought and concluded that a demonstrated commitment to premium compliance is also worthy of recognition, even if a plan corrects an underpayment (of which it is likely unaware) only after notice from PBGC. PBGC believes such a commitment is evidenced where a plan has a history of consistent compliance and acts promptly to correct an underpayment when notified by PBGC. PBGC therefore proposes to automatically waive 80 percent of penalties assessed at the higher (2½-percent) rate where the following two conditions are satisfied.

The first condition would be that the plan have a five-year record of premium compliance. Generally, this would mean timely payment of all premiums for the five plan years preceding the year of the delinquency, as shown by the plan's premium filings. However, a late payment would not count against a plan if PBGC did not require payment of a penalty, such as where there was a waiver of the entire penalty. A plan that was not in existence as a covered plan for the full five years would be judged on its coverage years.

The second condition would be prompt correction. This would mean that the premium shortfall for which a penalty was being assessed was made good within 30 days after PBGC notified the plan in writing that there was or might be a problem. In other words, a plan that met the first condition would be assessed penalty at the normally applicable rate, but it could earn an 80-percent waiver (that is, a waiver of all penalty above the lower "self-correction" rate) by paying the premium shortfall within 30 days.

Effect of Proposed Changes

PBGC typically discovers the most common premium payment errors fairly quickly—errors like failing to pay, sending payment that doesn't match the information filed, and so forth—and generally notifies plans of their delinquencies within a month or two after the due date. Thus, a plan that corrects an underpayment before or promptly after notice from PBGC typically owes no more than a few months' penalty.

For example, if a plan paid a $1 million premium two months late (after notice from PBGC), the penalty under the current regulation would be $100,000 (two months times 5 percent times $1 million). Under the proposed regulation, the penalty would be $50,000 (two months times 2½ percent times $1 million). If the plan qualified for the compliant plan partial waiver, the penalty would be reduced by 80 percent, from $50,000 to $10,000.

The effect of the proposed changes is summarized in the following table.

Good compliance history?	Monthly penalty rate if shortfall is corrected—		
	At or before date of PBGC notice	Within 30 days after PBGC notice	More than 30 days after PBGC notice
No	½ percent	2½ percent	2½ percent.
Yes	½ percent	½ percent (after waiver)	2½ percent.

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[3] Section 22(a) of the appendix to the premium payment regulation says that there is reasonable cause for failure to pay a premium timely if the failure arises from circumstances beyond the payer's control and the payer could not avoid the failure by the exercise of ordinary business care and prudence. Examples are provided in sections 24 and 25 of the appendix: Sudden and unexpected absence of a responsible individual, loss of records in a casualty or disaster, erroneous PBGC advice, and inability to get necessary information.

[4] See section 21(b)(5) of the appendix to the premium payment regulation.

[5] The proposal would not affect penalties for late payment of the termination premium under § 4007.13 of the premium payment regulation.

Applicability

PBGC proposes to apply the changes described above to late premium payments for plan years beginning after 2015.

Compliance With Regulatory Requirements

Executive Orders 12866 and 13563

PBGC has determined, in consultation with the Office of Management and Budget, that this proposed rule is not a "significant regulatory action" under Executive Order 12866.

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

PBGC would not expect this proposed rule to cause a significant change in premium compliance patterns. As noted above, PBGC's experience is that prompt assessment, rather than amount, is the key to using penalties as a compliance tool. A reduction in the penalty cost of late payment is unlikely to reduce the incidence of late payment, but is also unlikely to encourage late payment: No penalty is better than a low penalty. Thus, the primary effect of the proposal would be to save money for delinquent plans and reduce PBGC's penalty receipts. But PBGC assesses penalties not to generate income but to encourage compliance and sanction non-compliance. If PBGC can achieve the same level of timely payment while assessing lower penalties, higher penalties are inappropriate. And lower penalties may tend to encourage the continuation and adoption of defined benefit plans, a favorable outcome for plan participants.

PBGC estimates that this rule would reduce penalty assessments for late payment of premiums by $2 million per year.

This proposed rule is associated with retrospective review and analysis in PBGC's Plan for Regulatory Review issued in accordance with Executive Order 13563.

Regulatory Flexibility Act

The Regulatory Flexibility Act imposes certain requirements with respect to rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposed rule is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the Regulatory Flexibility Act requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the proposed rule describing the impact of the rule on small entities and seeking public comment on the impact. Small entities include small businesses, organizations and governmental jurisdictions.

For purposes of the Regulatory Flexibility Act requirements with respect to this proposed rule, PBGC considers a small entity to be a plan with fewer than 100 participants. This is consistent with certain requirements in title I of ERISA[6] and the Internal Revenue Code,[7] as well as the definition of a small entity that the Department of Labor (DOL) has used for purposes of the Regulatory Flexibility Act.[8] Using this proposed definition, about 64 percent (16,700 of 26,100) of plans covered by title IV of ERISA in 2010 were small plans.[9]

Further, while some large employers may have small plans, in general most small plans are maintained by small employers. Thus, PBGC believes that assessing the impact of the proposal on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business based on size standards promulgated by the Small Business Administration (13 CFR 121.201) pursuant to the Small Business Act. PBGC therefore requests comments on the appropriateness of the size standard used in evaluating the impact of the proposed rule on small entities.

On the basis of its proposed definition of small entity, PBGC certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the amendments in this rule would not have a significant economic impact on a substantial number of small entities. Accordingly, as provided in section 605 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), sections 603 and 604 do not apply. This certification is based on the fact that small plans generally pay small premiums and thus small penalties for late payment of premiums. The average late premium penalty paid by a small plan for the 2014 plan year was about $160. This proposed rule would cut penalty payments in half, and thus create an average annual net economic benefit for each small plan of about $80. This is not a significant impact. PBGC invites public comment on this assessment.

List of Subjects in 29 CFR Part 4007

Employee benefit plans, Penalties, Pension insurance, Reporting and recordkeeping requirements.

In consideration of the foregoing, PBGC proposes to amend 29 CFR part 4007 as follows:

PART 4007—PAYMENT OF PREMIUMS

■ 1. The authority citation for part 4007 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1303(A), 1306, 1307.

■ 2. In § 4007.8:

■ a. Paragraph (a) introductory text is amended by removing the words "paragraphs (b) through (g)" and adding in their place the words "paragraphs (b) through (h)"; and by removing the words "and is subject to a floor of $25 (or, if less, the amount of the unpaid premium)";

■ b. Paragraph (a)(1) is amended by removing the words "a written notice" and adding in their place the words "the first written notice"; by removing the words "1 percent" and adding in their place the words "½ percent"; and by removing the words "50 percent" and adding in their place the words "25 percent".

■ c. Paragraph (a)(2) is amended by removing the words "5 percent" and adding in their place the words "2½ percent"; and by removing the words "100 percent" and adding in their place the words "50 percent".

■ d. Paragraph (h) is added to read as follows:

§ 4007.8 Late payment penalty charges.

* * * * *

(h) *Demonstrated compliance.* If paragraph (a)(1) of this section does not apply, PBGC will waive 80 percent of the otherwise applicable premium payment penalty under paragraph (a)(2) of this section if the criteria in both paragraphs (h)(1) and (2) of this section are met.

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[6] See, *e.g.,* ERISA section 104(a)(2), which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants.

[7] See, *e.g.,* Code section 430(g)(2)(B), which permits plans with 100 or fewer participants to use valuation dates other than the first day of the plan year.

[8] See, *e.g.,* DOL's final rule on Prohibited Transaction Exemption Procedures, 76 FR 66637, 66644 (Oct. 27, 2011).

[9] See PBGC 2010 pension insurance data table S–31, *http://www.pbgc.gov/Documents/pension-insurance-data-tables-2010.pdf.*

(1) For each plan year within the last five plan years of coverage preceding the plan year for which the penalty rate is being determined,—

(i) Any required premium filing for the plan has been made; and

(ii) PBGC has not required payment of a penalty for the plan under this section.

(2) The amount of unpaid premium is paid within 30 days after PBGC issues the first written notice as described in paragraph (a)(1) of this section.

Issued in Washington DC this 21st day of April, 2016.

W. Thomas Reeder,

Director, Pension Benefit Guaranty Corporation.

[FR Doc. 2016–09960 Filed 4–27–16; 8:45 am]

BILLING CODE 7709–02–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 240 and 242

Federal Motor Carrier Safety Administration

49 CFR Part 391

[Docket Numbers FMCSA–2015–0419 and FRA–2015–0111, Notice No. 2]

Evaluation of Safety Sensitive Personnel for Moderate-to-Severe Obstructive Sleep Apnea; Public Listening Sessions

AGENCIES: Federal Motor Carrier Safety Administration (FMCSA) and Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of public listening sessions.

SUMMARY: FMCSA and FRA announce three public listening sessions on May 12, 17, and 25, 2016, to solicit information on the prevalence of moderate-to-severe obstructive sleep apnea (OSA) among individuals occupying safety sensitive positions in highway and rail transportation, and of its potential consequences for the safety of rail and highway transportation. FMCSA and FRA (collectively "the Agencies") also request information on potential costs and benefits from possible regulatory actions that address the safety risks associated with motor carrier and rail transportation workers in safety sensitive positions who have OSA. The listening sessions will provide interested parties an opportunity to share their views and any data or analysis on this topic with representatives of both Agencies. The Agencies will transcribe all comments and place the transcripts in the dockets referenced above for the Agencies' consideration. The Agencies will webcast the entire proceedings of all three meetings.

DATES: The listening sessions will be held on:

- Thursday, May 12, 2016, in Washington, DC;
- Tuesday, May 17, in, Chicago, IL; and
- Wednesday, May 25, in Los Angeles, CA.

All sessions will run from 10 a.m. to noon and 1:30 p.m. to 3:30 p.m., local time. If all interested parties have the opportunity to comment, the sessions may conclude early.

ADDRESSES: The May 12, 2016, listening session will be held at the National Association of Home Builders, 1201 15th Street NW., Washington, DC 20005. The May 17, 2016, session will be held at the Marriott Courtyard Chicago Downtown/River North, 30 E. Hubbard Street, Chicago, IL 60611. The final session will be held on May 25, 2016, at the Westin Bonaventure Hotel and Suites, 404 S. Figueroa Street, Los Angeles, CA 90071. In addition to attending the sessions in person, the Agencies offer several ways to provide comments, as described below.

Internet Address for Live Webcast. The Agencies will post specific information on how to participate via the Internet on the Agencies' Web sites at *www.fmcsa.dot.gov/calendar* and *www.fra.dot.gov/* in advance of the listening session. This Notice provides more information on the listening sessions below in Section II., Meeting Participation and Information the Agencies Seek from the Public.

Written comments. You may submit comments identified by Docket Numbers FMCSA–2015–0419 and FRA–2015–0111 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments;
- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE., West Building, Ground Floor, Washington, DC 20590–0001;
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; and
- *Fax:* 202–493–2251.

See the **SUPPLEMENTARY INFORMATION** section below for more details on how to submit written comments.

FOR FURTHER INFORMATION CONTACT: *For information about the listening sessions:* Ms. Shannon L. Watson, Senior Policy Advisor, FMCSA, 1200 New Jersey Avenue SE., Washington, DC 20590, by telephone at 202–366–2551, or by email at *shannon.watson@dot.gov.*

If you need sign language interpretation or any other accessibility accommodation, please contact Ms. Watson at least one week in advance of each session to allow us to arrange for such services. The Agencies cannot guarantee that interpreter services requested on short notice will be provided.

For other information on Obstructive Sleep Apnea:

FMCSA: Ms. Angela Wongus, Medical Programs Division, FMCSA, 1200 New Jersey Ave. SE., Washington, DC 20590, by telephone at 202–366–3109, or by email at *fmcsamedical@dot.gov.*

FRA: Dr. Bernard Arseneau, Medical Director, Assurance and Compliance, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590, by telephone at 202–493–6232, or by email at *bernard.arseneau@dot.gov.*

SUPPLEMENTARY INFORMATION:

Submitting Comments

If you submit a comment, please include the docket numbers for this notice (FMCSA–2015–0419 and FRA–2015–0111), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. The Agencies recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agencies can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* enter the docket numbers, FMCSA–2015–0419 and FRA–2015–0111, in the keyword box, and click "Search." When the new screen appears, click on the "Comment Now!" button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

The Agencies published the ANPRM on March 10, 2016 (81 FR 12642). The Agencies will consider all comments and material received before the end of the comment period on June 8, 2016, and may draft a notice of proposed rulemaking based on your comments and other information and analysis.

Viewing Comments and Documents

To view comments and any documents this preamble references as available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–2015–0419 and FRA–2015–0111, in the keyword box, and click "Search." Next, click the "Open Docket Folder" button and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays.

Privacy Act

Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its potential rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which you can review at *www.transportation.gov/privacy.*

I. Background

Advance Notice of Proposed Rulemaking

On March 10, 2016, the Agencies published an advance notice of proposed rulemaking (ANPRM) requesting data and information regarding the prevalence of moderate-to-severe OSA among individuals occupying safety sensitive positions in highway and rail transportation, and on its potential consequences for the safety of rail and highway transportation. 81 FR 12642. The Agencies also requested information on potential costs and benefits from regulatory actions that address the safety risks associated with motor carrier and rail transportation workers in safety sensitive positions who have OSA. *Id.* The purpose of these listening sessions is to receive oral comments in response to the ANPRM.

Legal Basis

Federal Motor Carrier Safety Administration

FMCSA has authority under 49 U.S.C. 31136(a) and 31502(b)—delegated to the Agency by 49 CFR 1.87(f) and (i), respectively—to establish minimum qualifications, including medical and physical qualifications, for commercial motor vehicle (CMV) drivers operating in interstate commerce. Section 31136(a)(3) requires that FMCSA's safety regulations ensure that the physical conditions of CMV drivers enable them to operate their vehicles safely, and that medical examiners (MEs) trained in physical and medical examination standards perform the physical examinations required of such operators.

In 2005, Congress authorized FMCSA to establish a Medical Review Board (MRB) composed of experts "in a variety of medical specialties relevant to the driver fitness requirements" to provide advice and recommendations on qualification standards. 49 U.S.C. 31149(a). The position of FMCSA Chief Medical Examiner was authorized at the same time. 49 U.S.C. 31149(b). Under section 31149(c)(1), FMCSA, with the advice of the MRB and Chief Medical Examiner, is directed to "establish, review and revise . . . medical standards for operators of commercial motor vehicles that will ensure that the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely." FMCSA, in conjunction with the Chief Medical Examiner, asked the MRB to review and report specifically on OSA.

Federal Railroad Administration

Under 49 U.S.C. 20103, the Secretary of Transportation (Secretary) has broad authority to issue regulations governing every area of railroad safety. The Secretary has delegated rulemaking responsibility under section 20103 to the Administrator of FRA. 49 CFR 1.89(a). Moreover, FRA has exercised this safety authority to require other medical testing. FRA regulations require locomotive engineers (49 CFR 240.121) and conductors (49 CFR 242.117) to undergo vision and hearing testing as part of their qualification and certification at least every 3 years. There are individual medical circumstances that may lead a railroad to require some engineers or conductors to undergo more frequent testing. In addition, Congress has authorized the Secretary to consider requiring certification of the following other crafts and classes of employees: (1) Car repair and maintenance employees; (2) onboard service workers; (3) rail welders; (4) dispatchers; (5) signal repair and maintenance employees; and (6) any other craft or class of employees that the Secretary determines appropriate. Therefore, the Secretary, and the FRA Administrator by delegation, have statutory authority to issue regulations to address the safety risks posed by employees in safety sensitive positions with OSA.

What is obstructive sleep apnea?

OSA is a respiratory disorder characterized by a reduction or cessation of breathing during sleep. OSA is characterized by repeated episodes of upper airway collapse in the region of the upper throat (pharynx) that results in intermittent periods of partial airflow obstruction (hypopneas), complete airflow obstruction (apneas), and respiratory effort-related arousals from sleep (RERAs) in which affected individuals awaken partially and may experience gasping and choking as they struggle to breathe. Risk factors for developing OSA include: Obesity; male gender; advancing age; family history of OSA; large neck size; and an anatomically small oropharynx (throat). OSA is associated as well with increased risk for other adverse health conditions such as: Hypertension (high blood pressure); diabetes; obesity; cardiac dysrhythmias (irregular heartbeat); myocardial infarction (heart attack); stroke; and sudden cardiac death.

Individuals who have undiagnosed OSA are often unaware they have experienced periods of sleep interrupted by breathing difficulties (apneas, hypopneas, or RERAs) when they wake. As a result, the condition is often unrecognized by affected individuals and underdiagnosed by medical professionals.

What are the safety risks in transportation?

For individuals with OSA, eight hours of sleep can be less restful or refreshing than four hours of ordinary, uninterrupted sleep.[1] Undiagnosed or inadequately treated moderate to severe OSA can cause unintended sleep episodes and resulting deficits in attention, concentration, situational awareness, and memory, thus reducing the capacity to safely respond to hazards when performing safety sensitive duties.

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[1] Gay, P., Weaver, T., Loube, D., Iber, C. (2006). Evaluation of positive airway pressure treatment for sleep related breathing disorders in adults. Positive Airway Pressure Task Force; Standards of Practice Committee; American Academy of Sleep Medicine. Sleep 29:381–401.

Therefore, OSA is a critical safety issue that can affect operations in all modes of travel in the transportation industry.

II. Meeting Participation and Information the Agencies Seek From the Public

Each listening session is open to the public. Speakers should try to limit their remarks to 3–5 minutes. No preregistration is required. Attendees may submit material to the Agencies' staff at the session to include in the pubic dockets referenced in this notice.

Those participating in the webcast will have the opportunity to submit comments online that will be read aloud at the sessions with comments made in the meeting rooms. The Agencies will docket the transcripts of the webcast, a separate transcription of each listening session prepared by an official court reporter, and all other materials submitted to the Agencies' personnel.

The Agencies continue to request public comment on the questions below. In your response, please provide supporting materials and identify your interest in this rulemaking, whether in the transportation industry, medical profession, or other.

The Problem of OSA

1. What is the prevalence of moderate-to-severe OSA among the general adult U.S. population? How does this prevalence vary by age?

2. What is prevalence of moderate-to-severe OSA among individuals occupying safety sensitive transportation positions? If it differs from that among the general population, why does it appear to do so? If no existing estimates exist, what methods and information sources can the Agencies use to reliably estimate this prevalence?

3. Is there information (studies, data, etc.) available for estimating the future consequences resulting from individuals with OSA occupying safety sensitive transportation positions in the absence of new restrictions? For example, does any organization track the number of historical motor carrier or train accidents caused by OSA? With respect to rail, how would any OSA regulations and the current positive train control system requirements interrelate?

4. Which categories of transportation workers with safety sensitive duties should be required to undergo screening for OSA? On what basis did you identify those workers?

Costs and Benefits

5. What alternative forms and degrees of restriction could FMCSA and FRA place on the performance of safety-sensitive duties by transportation workers with moderate-to-severe OSA, and how effective would these restrictions be in improving transportation safety? Should any regulations differentiate requirements for patients with moderate, as opposed to severe, OSA?

6. What are the potential costs of alternative FMCSA/FRA regulatory actions that would restrict the safety sensitive activities of transportation workers diagnosed with moderate-to-severe OSA? Who would incur those costs? What are the benefits of such actions and who would realize them?

7. What are the potential improved health outcomes for individuals occupying safety sensitive transportation positions who would receive OSA treatment due to regulations?

8. What models or empirical evidence is available to use to estimate potential costs and benefits of alternative restrictions?

9. What costs would be imposed on transportation workers with safety sensitive duties by requiring screening, evaluation, and treatment of OSA?

10. Are there any private or governmental sources of financial assistance? Would health insurance cover costs for screening and/or treatment of OSA?

Screening Procedures and Diagnostics

11. What medical guidelines, other than those the American Academy of Sleep Medicine guidance the Federal Aviation Administration currently uses, are suitable for screening transportation workers with safety sensitive duties that are regulated by FMCSA/FRA for OSA? What level of effectiveness are you seeing with these guidelines?

12. What were the safety performance histories of transportation workers with safety sensitive duties who were diagnosed with moderate-to-severe OSA, who are now successfully compliant with treatment before and after their diagnosis?

13. When and how frequently should transportation workers with safety sensitive duties be screened for OSA? What methods (laboratory, at-home, split, etc.) of diagnosing OSA are appropriate and why?

14. What, if any, restrictions or prohibitions should there be on transportation workers' safety sensitive duties while they are being evaluated for moderate-to-severe OSA?

15. What methods are currently employed for providing training or other informational materials about OSA to transportation workers with safety sensitive duties? How effective are these methods at identifying workers with OSA?

Medical Personnel Qualifications and Restrictions

16. What qualifications or credentials are necessary for a medical practitioner who performs OSA screening? What qualifications or credentials are necessary for a medical practitioner who performs the diagnosis and treatment of OSA?

17. With respect to FRA, should it use Railroad MEs to perform OSA screening, diagnosis, and treatment?

18. Should MEs or Agencies' other designated medical practitioners impose restrictions on a transportation worker with safety sensitive duties who self-reports experiencing excessive sleepiness while performing safety sensitive duties?

Treatment Effectiveness

19. What should be the acceptable criteria for evaluating the effectiveness of prescribed treatments for moderate-to-severe OSA?

20. What measures should be used to evaluate whether transportation employees with safety sensitive duties are receiving effective OSA treatment?

Issued on: April 22, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–09911 Filed 4–27–16; 8:45 am]

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Notices

Federal Register
Vol. 81, No. 82
Thursday, April 28, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Privacy Act of 1974; System of Records; USDA/Rural Development-1 Current or Prospective Producers or Landowners, Applicants, Borrowers, Grantees, Tenants, and Other Participants in RD Programs

AGENCY: Rural Housing Service, Rural Business-Cooperative Service, and Rural Utilities Service, USDA.

ACTION: Notice of proposed revision to an existing Privacy Act System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974 as amended; Section 12204 of the Agricultural Act of 2014 (2014 Farm, 5 U.S.C. 552a) Rural Development (RD) gives notice of its proposal to revise the system of records entitled USDA/Rural Development-1 Applicant, Borrower, Grantee or Tenant File.

DATES: Comments must be received no later than June 7, 2016. This system of records will be effective June 7, 2016 unless Rural Development receives comments, which would result in a contrary determination.

ADDRESSES: You may submit comments on this notice by any of the following methods: You may submit written or electronic comments on this notice by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street SW., 7th Floor, Washington, DC 20024.
- *Hand Delivery/Courier:* Submit written comments via Federal Express Mail or other courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street SW., 7th Floor, Washington, DC 20024.

All written comments will be available for public inspection during regular work hours at the 300 7th Street SW., 7th Floor address listed above.

FOR FURTHER INFORMATION CONTACT:

For general questions, please contact: Diego Maldonado, RD Privacy Act Officer, 4300 Goodfellow Boulevard, Room 52C13, St. Louis, MO 63120–0011; 314–457–6279.

For privacy issues, please contact: Kelvin Fairfax Chief Privacy Officer, Cyber and Privacy Policy and Oversight, Office of the Chief information Officer, Department of Agriculture, Washington, DC 20250.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, as amended (5 U.S.C. 552a), requires agencies to publish in the **Federal Register** notice of new or revised systems of records maintained by the agency. A system of records is a group of any records under the control of any agency, from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to an individual.

In accordance with the Office of Management and Budget (OMB) Circular A–130, Rural Development of the United States Department of Agriculture (USDA) is proposing to revise an existing Privacy Act system of records, which was last published in full on July 17, 1998 (63 FR 38546).

The agency proposes to make various revisions to USDA/RD–1, including several revisions related to the receipt for services (RFS) program. Section 2501A of the Food, Agriculture, Conservation, and Trade Act of 1990 was amended by Section 14003 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) to require that upon the request of a current or prospective producer or landowner, certain agencies, including agencies of the Rural Development Mission Area, provide a receipt for service concerning any benefit or service offered to agricultural producers or landowners. Section 12204 of the Agricultural Act of 2014 (2014 Farm Bill) further modified this requirement to mandate the issuance of a receipt for service to every current or prospective producer or landowner that requests about any benefit or service provided to a customer by agencies of the Rural Development Mission Area (or denial of service). Accordingly, the receipt for service program provides inquirers, applicants, or customers of the Rural Business Cooperative Service, the Rural Housing Service, and the Rural Utilities Service with a receipt for service for certain types of transactions requested. While these routine uses allow disclosures outside USDA, and so have some impact on privacy of individuals, they are either necessary for carrying out the agency mission and minimizing waste, fraud, and abuse; are required by law; or benefit the subjects of the records. On balance, the needs of the agency and the benefits to the individuals of these disclosures justify the minimal impact on privacy. The current SORN is located at: *http://www.ocio.usda.gov/sites/default/files/docs/2012/Rural%20Development-1.txt.* Rural Development proposes to revise the System of Records to reflect the following changes:

1. A security classification is added to the System Notice.
2. The system locations section is revised to reflect organizational and office location and responsibility changes.
3. The categories of individuals covered by the system section is revised to reflect the Receipt for Services program.
4. The categories of records in the system section is revised to reflect the Receipt for Services program.
5. The authority for maintenance of the system section is revised to reflect changes in the statutory authorities.
6. A purpose(s) section is added to the System Notice.
7. RD proposes the following changes to the routine uses:

a. The language of routine uses 2, 5–13, 15, 16, and 18 is revised slightly for clarity and consistency.

b. Routine use 14 is revised to identify the system, Credit Alert Verification Reporting System (CAIVRS) that is used by the Department of Housing and Urban Development (HUD) for the purpose of prescreening applicants.

c. Routine use 17 is deleted.

d. Routine use 18 is renumbered as routine use 17 and is revised slightly for clarity and consistency.

e. New routine use 18 is added to disclose to the Department of Health and Human Services parent locator system for finding parents who do not pay child support.

f. Routine use 19 is added to allow disclosure to contractors, grantees, experts, consultants or volunteers who are performing a service on behalf of the agency.

g. Routine use 20 is added to allow disclosure of records to customer service agents for training and evaluation purposes.

h. Routine use 21 is added to allow disclosure of records to appropriate agencies, entities, and persons for purposes of response and remedial efforts in the event that there has been a breach of the data contained in the systems.

i. Routine use 22 is added to comply with Federal Funding Accountability and Transparency Act for public disclosure purposes.

j. Routine use 23 is added to allow disclosure to the National Archives and Records Administration for records management purposes.

k. Routine use 24 is added to allow disclosure to the Department of the Treasury for the purpose of identifying, preventing, or recouping improper payments.

8. The policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system section is revised to reflect changes in record keeping including use of electronic records.

9. The system manager and address section is revised to include a Web site link.

10. The record source categories section is revised to reflect the Receipt for Services program.

Dated: March 23, 2016.

Lisa Mensah,

Under Secretary, Rural Development.

SYSTEM OF RECORDS

USDA/Rural Development-1.

SYSTEM NAME:

Applicant, Borrower, Grantee, or Tenant File.

Security Classification: unclassified.

SYSTEM LOCATION:

Each Rural Development current or prospective producers or landowners, applicants, borrowers, grantees, tenants, their respective household members, including members of associations, and other participants in RD programs. Files is located in the Local, Area, or State Office through which the financial assistance is sought or was obtained; in the Centralized Servicing Center (CSC), St. Louis, Missouri; and in the Finance Office in St. Louis, Missouri. A State Office version of the Local or Area Office file may be located in or accessible by the State Office which is responsible for that Local or Area Office. Correspondence regarding borrowers is located in the State and National Office files.

A list of all State Offices and any additional States/Offices for which an office is responsible is as follows:

Montgomery, AL
Palmer, AK
Phoenix, AZ
Little Rock, AR
Davis, CA
Lakewood, CO
Dover, DE (includes Maryland)
Gainesville, FL (includes U. S. Virgin Islands)
Athens, GA
Hilo, HI (includes Western Pacific Territories of American Samoa, Guam, and Commonwealth of the Marianas Islands, Federated States of Micronesia, Republic of Palau, and the Marshall Islands)
Boise, ID
Champaign, IL
Indianapolis, IN
Des Moines, IA
Topeka, KS
Lexington, KY
Alexandria, LA
Bangor, ME
Amherst, MA (includes Connecticut and Rhode Island)
East Lansing, MI
St. Paul, MN
Jackson, MS
Columbia, MO
Bozeman, MT
Lincoln, NE
Carson City, NV
Mt. Laurel, NJ
Albuquerque, NM
Syracuse, NY
Raleigh, NC
Bismarck, ND
Columbus, OH
Stillwater, OK
Portland, OR
Harrisburg, PA
San Juan, PR
Columbia, SC
Huron, SD
Nashville, TN
Temple, TX
Salt Lake City, UT
Montpelier, VT (includes New Hampshire)
Richmond, VA
Olympia, WA
Morgantown, WV
Stevens Point, WI
Casper, WY

The address of Local, Area, and State Offices are listed in the telephone directory of the appropriate city or town under the heading, "United States Government, Department of Agriculture, and Rural Development." The Financial Office and CSC are located at 4300 Goodfellow Blvd., St. Louis, MO 63120–0011.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or prospective producers or landowners, applicants, borrowers, grantees, tenants, and their respective household members, including members of associations and other participants in RD programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes files containing the names of current or prospective producers or landowners, applicants, borrowers, grantees, tenants and their respective household members, including members of associations and other participants in RD programs. It may also include their social security or employer identification number, bank routing and account numbers; and their respective household members' characteristics, such as gross and net income, sources of income, capital, assets and liabilities, net worth, age, race, number of dependents, marital status, reference material, farm or ranch operating plans, and property appraisal. The system also includes credit reports and personal references from credit agencies, lenders, businesses, and individuals. In addition, a running record of observation concerning the operations of the person being financed is included. A record of deposits to and withdrawals from an individual's supervised bank account is also contained in those files where appropriate. In some Local Offices, this record is maintained in a separate folder containing only information relating to activity within supervised bank accounts. Some items of information are extracted from the individual's file and placed in a card file for quick reference.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Consolidated Farm and Rural Development Act of 1972, as amended; Section 12204 of the Agricultural Act of 2014 (Pub. L. 113–79); AGRICULTURAL CREDIT 7 U.S.C. 1921 *et seq.;* FARM HOUSING 42 U.S.C. 1471 *et seq.;* Section 901 of the Food Conservation, and Energy Act of 2008 (Pub L. 110–246); RURAL ELECTRIFICATION AND TELEPHONE SERVICE 7 U.S.C. 901 *et seq.*

PURPOSE(S):

Rural Development (RD) maintains numerous information systems that are used for current or prospective producers or landowners, applicants, borrowers, grantees, tenants, and other participants in RD programs designed to help improve the economy and quality of life in rural America. These financial systems support such essential public facilities and service as water and sewer systems, housing, health clinics, emergency service facilities, and electric and telephone services. Additionally, RD systems and feeder applications promote economic development by supporting loans to businesses through banks, credit unions, and community-managed lending pools. The suite of RD systems covered by this System of Records is developed and maintained by the Deputy Chief Information Officer in St. Louis, MO and the National Development Branch in Washington, DC.

ROUTINE USES OF RECORDS MAINTAINED IN THE GROUP OF APPLICATIONS, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, or tribal, or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative or prospective responsibility of the receiving entity.

2. To a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

3. Rural Development will provide information from these systems to the U.S. Department of the Treasury and to other Federal agencies maintaining debt servicing centers, in connection with overdue debts, in order to participate in the Treasury Offset Program as required by the Debt Collection Improvements Act, Public Law 104–134, section 31001.

4. Disclosure to Rural Development of name, home addresses, and information concerning default on loan repayment when the default involves a security interest in tribal allotted or trust land. Pursuant to the Cranston-Gonzales National Affordable Housing Act of 1990 (42 U.S.C. 12701 *et seq.*), liquidation may be pursued only after offering to transfer the account to an eligible tribal member, the tribe, or the Indian housing authority serving the tribe(s).

5. Disclosure of names, home addresses, social security numbers, and financial information to a collection or servicing contractor, financial institution, or a local, State, or Federal agency, when Rural Development determines such referral is appropriate for servicing or collecting the borrower's account or as provided for in contracts with servicing or collection agencies.

6. To a court or adjudicative body in a proceeding when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

7. Disclosure of names, home addresses, and financial information for selected borrowers to financial consultants, advisors, lending institutions, packagers, agents, and private or commercial credit sources, when Rural Development determines such referral is appropriate to encourage the borrower to refinance his Rural Development indebtedness as required by Title V of the Housing Act of 1949, as amended (42 U.S.C. 1471), or to assist the borrower in the sale of the property.

8. Disclosure of legally enforceable debts to the Department of the Treasury, Internal Revenue Service (IRS), to be offset against any tax refund that may become due the debtor for the tax year in which the referral is made, in accordance with the IRS regulations at 26 CFR 301.6402–6T, Offset of Past Due Legally Enforceable Debt Against Overpayment, and under the authority contained in 31 U.S.C. 3720A.

9. Disclosure of information regarding indebtedness to the Defense Manpower Data Center, Department of Defense, and the United States Postal Service for the purpose of conducting computer matching programs to identify and locate individuals receiving Federal salary or benefit payments and who are delinquent in their repayment of debts owed to the U.S. Government under certain programs administered by Rural Development in order to collect debts under the provisions of the Debt Collection Act of 1982 (5 U.S.C. 5514) by voluntary repayment, administrative or salary offset procedures, or by collection agencies.

10. Disclosure of names, home addresses, and financial information to lending institutions when Rural Development determines the individual may be financially capable of qualifying for credit with or without a guarantee.

11. Disclosure of names, home addresses, social security numbers, and financial information to lending institutions that have a lien against the same property as Rural Development for the purpose of the collection of the debt. These loans may be under the direct and guaranteed loan programs.

12. Disclosure to private attorneys under contract with either Rural Development or with the Department of Justice for the purpose of foreclosure and possession actions and collection of past due accounts in connection with Rural Development.

13. To the Department of Justice when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity where the Department of Justice has agreed to represent the employee; or (c) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

14. Disclosure of names, home addresses, social security numbers, and financial information to the Department of Housing and Urban Development for the purpose of evaluating a loan applicant's creditworthiness, information that will allow for the pre-screening of applicants through the Credit Alert Verification Reporting System (CAIVRS) computer matching program. An applicant shall be pre-screened for any debts owed or loans guaranteed by the Federal government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Federal government. Authorized employees of, and approved private lenders acting on behalf of, the Federal agencies participating in the CAIVRS computer matching program will be able to search the CAIVRS database.

Explanatory Text: Credit Alert Verification Reporting System (CAIVRS) is a Federal government database of delinquent Federal debtors that when reviewed, allows Federal agencies to reduce the risk to Federal loan and loan guarantee programs. CAIVRS alerts participating Federal lending agencies when an applicant for credit benefits has a Federal lien, judgment, or a Federal loan that is currently in default or foreclosure, or has had a claim paid by a reporting agency. CAIVRS allows authorized employees of participating Federal agencies to access a database of delinquent Federal borrowers for the purpose of pre-screening direct loan applicants for credit worthiness and also permits approved private lenders acting on behalf of the Federal agency to access the delinquent borrower database for the purpose of prescreening the credit worthiness of applicants for federally guaranteed loans. CAIVRS authority derives from the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503) as amended, Office of Management and Budget (OMB) Circulars A–129 (Managing Federal Credit Programs) and A–70 (Policies and Guidelines for Federal Credit Programs), the Budget and Accounting Acts of 1921 and 1950, as amended, the Debt Collection Act of 1982, as amended, the Deficit Reduction Act of 1984, as amended, and the Debt Collection Improvement Act of 1996, as amended.

15. Disclosure of names, home addresses, social security numbers, and financial information to the Department of Labor, State Wage Information Collection Agencies, and other Federal, State, and local agencies, as well as those responsible for verifying information furnished to qualify for Federal benefits, to conduct wage and benefit matching through manual and/or automated means, for the purpose of determining compliance with Federal regulations and appropriate servicing actions against those not entitled to program benefits, including possible recovery of improper benefits.

16. Disclosure of names, home addresses, and financial information to financial consultants, advisors, or underwriters, when Rural Development determines such referral is appropriate for developing packaging and marketing strategies involving the sale of Rural Development loan assets.

17. Disclosure of names, home and work addresses, home telephone numbers, social security numbers, and financial information to escrow agents (which also could include attorneys and title companies) selected by the applicant or borrower for the purpose of closing the loan.

18. Disclosure to Health and Human Services (HHS) parent locator system for finding parents who do not pay child support: The name and current address of record of an individual may be disclosed from this system of records to the parent locator service of the Department of HHS or authorized persons defined by Public Law 93–647, 42 U.S.C. 653.

19. To agency contractors, grantees, experts, consultants or volunteers who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

20. Disclosure to customer service agents for training and evaluation purposes. Information is collected during calls made by the client to the CSC Customer Service Section to discuss questions or concerns pertaining to their mortgage account(s) with Rural Development. The information discussed during the call to the CSC help desk is captured and used for training and evaluation purposes to ensure proper procedures are being followed and accurate information is provided when assisting the client.

21. To appropriate agencies, entities, and persons when (1) When Rural Development suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

22. To comply with Federal Funding Accountability and Transparency Act (FFATA) and similar statutory requirements for public disclosure in situations where records reflect loans, grants, or other payments to members of the public: USDA will disclose information about individuals from this system of records in accordance with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282; codified at 31 U.S.C. 6101, *et seq.*); section 204 of the E-Government Act of 2002 (Pub. L. 107–347; 44 U.S.C. 3501 note), and the Office of Federal Procurement Policy Act (41 U.S.C. 403 *et seq.*), or similar statutes requiring agencies to make available publicly information concerning Federal financial assistance, including grants, subgrants, loan awards, cooperative agreements and other financial assistance; and contracts, subcontracts, purchase orders, task orders, and delivery orders.

23. To the National Archives and Records Administration for to the National Archives and Records Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

24. To the Department of the Treasury for the purpose of identifying, preventing, or recouping improper payments to an applicant for, or recipient of, Federal funds, including funds disbursed by a State in a State-administered, Federally funded program, information that will allow for pre-payment eligibility review of a loan applicant through the Do Not Pay computer matching program. Authorized employees of, and approved private lenders acting on behalf of, the Federal agencies participating in the Do Not Pay computer matching program will be able to search the Do Not Pay database. The disclosure may include applicant's name, home address, Social Security Number, income/financial data, date of birth, personal telephone number, and personal email address.

EXPLANATORY TEXT:

In order to help eliminate waste, fraud, and abuse in Federal programs, Federal agencies are to focus on preventing payment errors before they occur. The purpose of the Department of the Treasury's Do Not Pay program is to reduce improper payments by intensifying efforts to eliminate payment error, waste, fraud, and abuse in the major programs administered by the Federal Government, while continuing to ensure that Federal programs serve and provide access to their intended beneficiaries. Federal agencies shall thoroughly review the Do Not Pay computer matching database, to the extent permitted by law to determine applicant eligibility before the release of any Federal funds. By checking the Do Not Pay database before making payments, Federal agencies can identify ineligible recipients and prevent certain improper payments from being made. The Do Not Pay program authority derives from the Improper

Payments Elimination and Recovery Improvement Act of 2012 (Pub. L. 112–248).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders at the Local, Area, State, and National Offices. All records are converted to electronic format and stored on a USDA managed certified and accredited storage repository. Once agency employees convert the paper documents to digital records, verify that the digital record is readable and successfully ported to the imaging repository the manual documents are destroyed in compliance with Rural Development regulation (shredding). Other program imaging repositories are utilized to allow multi-point access to electronic records but the manual documents are retained securely in the local office until such time as the account is considered closed per Rural Development Regulation 2033–A. At that time, the documents/case files are destroyed in a manner as outlined in Rural Development regulation. If the office cannot accommodate proper, manual file retention standards (inadequate space to secure and house documents/files that require retention), inactive documents/case files (*i.e.*, charge-offs, pay-offs, denials, withdrawn) can be retired to the Federal Records Center. Any records shipped to the Center for retention must be clearly inventoried and marked with a destroy-by date. The destroy date is determined by the record type after it is closed (*e.g.*, loss to the government retention is 7 years after case is closed). The retention schedule can be found at RD 2033–A and the Operational Records Manual. For further information contact the RD Records Officer. If closed/inactive files are retained at the local office until such time as they are eligible for destruction, they are stored in a secured location.

RETRIEVABILITY:

Records are indexed by name, identification number and type of loan or grant. Data may be retrieved from the paper records or the electronic storage. All Rural Development state and field offices as well as the financial office and the Centralized Servicing Center (CSC) have the telecommunications capability available to access this subset of data.

SAFEGUARDS:

Paper records are kept in locked offices at the Local, Area, State, and National Offices. For electronic records and an online retrieval system at the Finance Office access is restricted to authorized Rural Development personnel. A system of operator and terminal passwords and code numbers is used to restrict access to the online system. Passwords and code numbers are changed as necessary.

The records are protected by the confidentiality requirements of the USDA Office of the Chief Information Officer (OCIO) Cyber Security Manuals and the provisions of the Privacy Act. Only authorized USDA employees will have access to the records in this system on a need to know basis. Role based access controls are used and the systems are accessible via the USDA Intranet. Only authorized USDA personnel will have access to these records. The systems covered by this notice have been categorized as having a Moderate security categorization impact as identified in Federal Information Processing Standard (FIPS) 199, Standards for Security Categorization of Federal Information and Information Systems. The security controls implemented within the systems will correspond with those published in the National Institute of Standards and Technology (NIST) Special Publication 800–53, Recommended Security Controls for Federal Information Technology Systems for a Moderate impact system.

Users are only granted system access upon successful completion of information security training and each user is supplied with a unique and strong user-id and password. The user roles are restrictive and based on the principle of least privilege allowing for adequate performance of job functions and access to information is based on a need to know.

Due to the financial nature of the systems covered by this notice, the systems also adhere to the security controls identified in the Federal Information Security Control Audit Manual (FISCAM). The mandatory requirements of FIPS 199 and FIPS 200, Minimum Security Requirements for Federal Information and Information Systems, support the Federal Information Security Management Act (FISMA) and the FISCAM supports the mandated Office of Management and Budget (OMB) Circular A–123, Management of Internal Controls.

Moreover, Specific USDA security requirements are adhered to through the USDA Cyber Security Manuals including but not limited to: DM3545–000, Personnel Security, and DM3510–001, Physical Security Standards for Information Technology Restricted Space.

RETENTION AND DISPOSAL:

Records are maintained subject to the Federal Records Disposal Act of 1943 (44 U.S.C. 33), and in accordance with Rural Development's disposal schedules. The Local, Area, State, and National Offices dispose of records by shredding, burning, or other suitable disposal methods after established retention periods have been fulfilled. (Destruction methods may never compromise the confidentiality of information contained in the records.) Applications, including credit reports and personal references, which are rejected, withdrawn, or otherwise terminated are kept in the Local, Area, or State Office for two full fiscal years and one month after the end of the fiscal year in which the application was rejected, withdrawn, canceled, or expired. If final action was taken on the application, including an appeal, investigation, or litigation, the application is kept for one full fiscal year after the end of the fiscal year in which final action was taken.

The records, including credit reports, of borrowers who have paid or otherwise satisfied their obligation are retained in the Local, Area, or State Office for one full fiscal year after the fiscal year in which the loan was paid in full. Correspondence records at the National Office which concern borrowers and applicants are retained for three full fiscal years after the last year in which there was correspondence.

SYSTEM MANAGER(S) AND ADDRESS:

The Community Development Manager at the Local Office; the Rural Development Manager at the Area Office; and the State Director at the State Office; the Deputy Chief Financial Officer in St. Louis, MO; and the respective Administrators in the National Office at the following addresses: Administrator, Rural Housing Service, USDA, 1400 Independence Avenue SW., Room 5014, South Building, Stop 0701, Washington, DC 20250–0701; Administrator, Rural Business-Cooperative Service, USDA, 1400 Independence Avenue SW., Room 5045, South Building, Stop 3201, Washington, DC 20250–3201;

Administrator, Rural Utilities Service, USDA, 1400 Independence Avenue SW., Room 4501, South Building, Stop 1510, Washington, DC 20250–1510. Contact information can be found at *http://www.rd.usda.gov.*

NOTIFICATION PROCEDURE:

Any individual may request information regarding this system of records, or determine whether the system contains records pertaining to him/her, from the appropriate System Manager. If the specific location of the record is not known, the individual should address his or her request to: Rural Development, Freedom of information Officer, United States Department of Agriculture, 1400 Independence Avenue SW., Stop 0742, and Washington, DC 20250–0742.

A request for information pertaining to an individual must include a name; an address; the Rural Development office where the loan or grant was applied for, approved, and/or denied; the type of Rural Development program; and the date of the request or approval.

RECORD ACCESS PROCEDURES:

Any individual may obtain information regarding the procedures for gaining access to a record in the system which pertains to him or her by submitting a written request to one of the System Managers.

CONTESTING RECORD PROCEDURES:

Same as record access procedures.

RECORD SOURCE CATEGORIES:

Information in this system comes primarily Credit reports and personal references come primarily from current or prospective producers or landowners, applicants, borrowers, grantees, tenant. Credit agencies and creditors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2016–09938 Filed 4–27–16; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–23–2016]

Foreign-Trade Zone 229—Charleston, West Virginia; Application for Reorganization/Expansion Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the West Virginia Economic Development Authority, grantee of FTZ 229, requesting authority to reorganize and expand the zone under the alternative site framework (ASF) adopted by the FTZ Board (15 CFR Sec. 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new subzones or "usage-driven" FTZ sites for operators/users located within a grantee's "service area" in the context of the FTZ Board's standard 2,000-acre activation limit for a zone. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on April 22, 2016.

FTZ 229 was approved by the FTZ Board on February 13, 1998 (Board Order 954, 63 FR 9177, February 24, 1998). The current zone includes the following site: *Site 1* (24 acres)—Charleston Ordnance Center, 3100 MacCorkle Avenue SW., South Charleston.

The grantee's proposed service area under the ASF would be the Counties of Boone, Cabell, Calhoun, Clay, Fayette, Jackson, Kanawha, Lincoln, Logan, Mason, Mingo, Putnam, Raleigh, Roane, Wayne, Wirt, Wood and Wyoming, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The application indicates that the proposed service area is within and adjacent to the Charleston Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone to include existing Site 1 as a "magnet" site. The applicant is also requesting approval of the following "magnet" site: *Proposed Site 2* (78 acres)—Heartland Intermodal Gateway, 401 Heartland Drive, Prichard, West Virginia. The ASF allows for the possible exemption of one magnet site from the "sunset" time limits that generally apply to sites under the ASF, and the applicant proposes that Site 2 be so exempted. The application would have no impact on FTZ 229's previously authorized subzones.

In accordance with the FTZ Board's regulations, Kathleen Boyce of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is June 27, 2016. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 12, 2016.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the "Reading Room" section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.* For further information, contact Kathleen Boyce at *Kathleen.Boyce@trade.gov* or (202) 482–1346.

Dated: April 22, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–09965 Filed 4–27–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–50–2016]

Foreign-Trade Zone 186—Waterville, Maine; Application for Subzone, Flemish Master Weavers' Sanford, Maine

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Waterville, grantee of FTZ 186, requesting subzone status for the facility of Flemish Master Weavers, located in Sanford, Maine. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on April 21, 2016.

The proposed subzone (4.80 acres) is located at 96 Gatehouse Road, Sanford, Maine. A notification of proposed production activity has been docketed separately and is being processed under 15 CFR 400.37 (Docket B–18–2016, 81 FR 22210, April 15, 2015). The proposed subzone would be subject to the existing activation limit of FTZ 186.

In accordance with the Board's regulations, Kathleen Boyce of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is June 7, 2016. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 22, 2016.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Kathleen Boyce at *Kathleen.Boyce@trade.gov* or 202–482–1346.

Dated: April 21, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–09964 Filed 4–27–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–812]

Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Rescission of Antidumping Duty Administrative Review; 2015–2016

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") is rescinding the administrative review of the antidumping duty order on steel wire garment hangers from the Socialist Republic of Vietnam ("Vietnam") for the period February 1, 2015 through January 31, 2016.

DATES: *Effective Date:* April 28, 2016.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6905.

SUPPLEMENTARY INFORMATION:

Background

On April 7, 2016, based on a timely request for review by M&B Metal Products Company, Inc.; Innovative Fabrication LLC/Indy Hanger; and US Hanger Company, LLC (collectively, "Petitioners"),[1] the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on steel wire garment hangers from Vietnam covering the period February 1, 2015, through January 31, 2016.[2] The review covers 67 companies.[3] On April 15, 2016, Petitioners withdrew their request for an administrative review on all 67 companies listed in the *Initiation Notice.*[4] No other party requested a review of these exporter or any other exporters of subject merchandise.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the publication of the notice of initiation of the requested review. In this case, Petitioners timely withdrew their request by the 90-day deadline, and no other party requested an administrative review of the antidumping duty order. As a result, pursuant to 19 CFR 351.213(d)(1), we are rescinding the administrative review of the antidumping duty order on steel wire garment hangers from Vietnam for the period February 1, 2015, through January 31, 2016, in its entirety.

Assessment

The Department will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries. Because the Department is rescinding this administrative review in its entirety, the entries to which this administrative review pertained shall be assessed antidumping duties at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after the publication of this notice in the **Federal Register**, if appropriate.

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a final reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: April 20, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–09880 Filed 4–27–16; 8:45 am]

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[1] *See* Petitioners' submission, "Steel Wire Garment Hangers from Vietnam: Request for Third Administrative Review," dated February 10, 2016. Additionally, prior to initiation, the Department and counsel for Petitioners discussed duplication of names in their review request. Based on Petitioners' agreement, the Department removed a duplicate name to be initiated for review in the **Federal Register**. *See* Memorandum to the File, through Catherine Bertrand, Program Manager, Office V, from Irene Gorelik, Analyst, Office V, re; "Clarification of Company Names Within Petitioners' Review Request," dated March 21, 2016.

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 20324 (April 7, 2015) ("*Initiation Notice*").

[3] *Id.*

[4] *See* Petitioners' Submission re; "Third Administrative Review of Steel Wire Garment Hangers from Vietnam—Petitioners' Withdrawal of Review Request," dated April 15, 2016.

DEPARTMENT OF COMMERCE

International Trade Administration

Subsidy Programs Provided by Countries Exporting Softwood Lumber and Softwood Lumber Products to the United States; Request for Comment

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) seeks public comment on any subsidies, including stumpage subsidies, provided by certain countries exporting softwood lumber or softwood lumber products to the United States during the period July 1, 2015 through December 31, 2015.

DATES: Comments must be submitted within 30 days after publication of this notice.

ADDRESSES: *See* the Submission of Comments section below.

FOR FURTHER INFORMATION CONTACT: James Terpstra, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3965.

SUPPLEMENTARY INFORMATION:

Background

On June 18, 2008, section 805 of Title VIII of the Tariff Act of 1930 (the Softwood Lumber Act of 2008) was enacted into law. Under this provision, the Secretary of Commerce is mandated to submit to the appropriate Congressional committees a report every 180 days on any subsidy provided by countries exporting softwood lumber or softwood lumber products to the United States, including stumpage subsidies.

The Department submitted its last subsidy report on December 16, 2015. As part of its newest report, the Department intends to include a list of subsidy programs identified with sufficient clarity by the public in response to this notice.

Request for Comments

Given the large number of countries that export softwood lumber and softwood lumber products to the United States, we are soliciting public comment only on subsidies provided by countries whose exports accounted for at least one percent of total U.S. imports of softwood lumber by quantity, as classified under Harmonized Tariff Schedule code 4407.1001 (which accounts for the vast majority of imports), during the period July 1, 2015 through December 31, 2015. Official U.S. import data published by the United States International Trade Commission Tariff and Trade DataWeb indicate that only two countries, Canada and Chile, exported softwood lumber to the United States during that time period in amounts sufficient to account for at least one percent of U.S. imports of softwood lumber products. We intend to rely on similar previous six-month periods to identify the countries subject to future reports on softwood lumber subsidies. For example, we will rely on U.S. imports of softwood lumber and softwood lumber products during the period January 1, 2016 through June 30, 2016, to select the countries subject to the next report.

Under U.S. trade law, a subsidy exists where an authority: (i) Provides a financial contribution; (ii) provides any form of income or price support within the meaning of Article XVI of the GATT 1994; or (iii) makes a payment to a funding mechanism to provide a financial contribution to a person, or entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments, and a benefit is thereby conferred.[1]

Parties should include in their comments: (1) The country which provided the subsidy; (2) the name of the subsidy program; (3) a brief description (at least 3–4 sentences) of the subsidy program; and (4) the government body or authority that provided the subsidy.

Submission of Comments

Persons wishing to comment should file comments by the date specified above. Comments should only include publicly available information. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially due to business proprietary concerns or for any other reason. The Department will return such comments or materials to the persons submitting the comments and will not include them in its report on softwood lumber subsidies. The Department requests submission of comments filed in electronic Portable Document Format (PDF) submitted on CD–ROM or by email to the email address of the EC Webmaster, below.

The comments received will be made available to the public in PDF on the Enforcement and Compliance Web site at the following address: *http://enforcement.trade.gov/sla2008/sla-index.html.* Any questions concerning file formatting, access on the Internet, or other electronic filing issues should be addressed to Laura Merchant, Enforcement and Compliance Webmaster, at (202) 482–0367, email address: *webmaster_support@trade.gov.*

All comments and submissions in response to this Request for Comment should be received by the Department no later than 5 p.m. Eastern Standard Time on the above-referenced deadline date.

Dated: April 21, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–09887 Filed 4–27–16; 8:45 am]

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[1] *See* section 771(5)(B) of the Tariff Act of 1930, as amended.

DEPARTMENT OF COMMERCE

International Trade Administration

Submission for OMB Review; Comment Request

AGENCY: Committee for the Implementation of Textile Agreements, International Trade Administration, Commerce.

On behalf of the Committee for the Implementation of Textile Agreements (CITA), the Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title: Interim Procedures for Considering Requests from the Public for Textile and Apparel Safeguard Actions on Imports from Panama.

Form Number(s): N/A.

OMB Control Number: 0625–0274.

Type of Request: Regular submission.

Burden Hours: 24.

Number of Respondents: 6 (1 for Request; 5 for Comments).

Average Hours per Response: 4 hours for a Request; and 4 hours for each Comment.

Average Annual Cost to Public: $960.

Needs and Uses: Title III, Subtitle B, Section 321 through Section 328 of the United States-Panama Trade Promotion Agreement Implementation Act (the "Act") [Pub. L. 112–43] implements the textile and apparel safeguard provisions, provided for in Article 3.24 of the United States-Panama Trade Promotion Agreement (the "Agreement"). This safeguard mechanism applies when, as a result of the elimination of a customs duty under the Agreement, a Panamanian textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage or actual threat thereof to a U.S. industry producing a like or directly competitive article. In these circumstances, Article 3.24 permits the United States to increase duties on the imported article from Panama to a level that does not exceed the lesser of the prevailing U.S. normal trade relations (NTR)/most-favored-nation (MFN) duty rate for the article or the U.S. NTR/MFN duty rate in effect on the day the Agreement entered into force.

The Statement of Administrative Action accompanying the Act provides that the Committee for the Implementation of Textile Agreements (CITA) will issue procedures for requesting such safeguard measures, for making its determinations under section 322(a) of the Act, and for providing relief under section 322(b) of the Act.

In Proclamation No. 8894 (77 FR 66507, November 5, 2012), the President delegated to CITA his authority under Subtitle B of Title III of the Act with respect to textile and apparel safeguard measures.

CITA must collect information in order to determine whether a domestic textile or apparel industry is being adversely impacted by imports of these products from Panama, thereby allowing CITA to take corrective action to protect the viability of the domestic textile or apparel industry, subject to section 322(b) of the Act.

Affected Public: Individuals or households; businesses or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to OIRA *Submission@omb.eop.gov* or fax to (202) 395–5806.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2016–09927 Filed 4–27–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–045]

1-Hydroxyethylidene-1, 1-Diphosphonic Acid From the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* April 20, 2016.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos at (202) 482–2243 or Paul Walker (202) 482–0413, AD/CVD Operations, Enforcement & Compliance, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petition

On March 31, 2016, the Department of Commerce (the Department) received an antidumping duty (AD) petition concerning imports of 1-hydroxyethylidene-1, 1-diphosphonic acid (HEDP) from the People's Republic of China (PRC), filed in proper form on behalf of Compass Chemical International LLC (Compass or Petitioner).[1] The AD petition was accompanied by a countervailing duty (CVD) petition for the PRC.[2] Petitioner is a domestic producer of HEDP.[3]

On April 5, 2016, the Department requested additional information and clarification of certain areas of the Petition.[4] Petitioner filed responses to these requests on April 7, 8, and 14, 2016.[5]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), Petitioner alleges that imports of HEDP from the PRC are being, or are likely to be, sold in the United States at less-than-fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States. Also, consistent with section 732(b)(1) of the Act, the Petition is accompanied by information reasonably available to Petitioner supporting its allegations.

The Department finds that Petitioner filed this Petition on behalf of the domestic industry because Petitioner is an interested party as defined in section 771(9)(C) of the Act. The Department also finds that Petitioner demonstrated sufficient industry support with respect to the initiation of the AD investigation that Petitioner is requesting.[6]

Period of Investigation

Because the Petition was filed on March 31, 2016, pursuant to 19 CFR 351.204(b)(1), the period of investigation (POI) is July 1, 2015 through December 31, 2015.

Scope of the Investigation

The product covered by this investigation is HEDP from the PRC. For a full description of the scope of this investigation, *see* the "Scope of the Investigation," in Appendix I of this notice.

Comments on Scope of the Investigation

During our review of the Petition, the Department issued questions to, and received responses from, Petitioner pertaining to the proposed scope to ensure that the scope language in the Petition would be an accurate reflection of the products for which the domestic industry is seeking relief.[7]

As discussed in the preamble to the Department's regulations,[8] we are setting aside a period for interested parties to raise issues regarding product coverage (scope). The Department will consider all comments received from parties and, if necessary, will consult with parties prior to the issuance of the preliminary determination. If scope comments include factual information (*see* 19 CFR 351.102(b)(21)), all such factual information should be limited to public information. In order to facilitate preparation of its questionnaires, the Department requests all interested parties to submit such comments by 5:00 p.m. Eastern Time (ET) on Tuesday, May 10, 2016, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on Friday, May 20, 2016.

The Department requests that any factual information the parties consider relevant to the scope of the investigation be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact the Department and request permission to submit the additional information. All such comments must also be filed on the record of the concurrent CVD investigation.

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[1] *See* the Petition for the Imposition of Antidumping and Countervailing Duties on Imports of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China, dated March 31, 2016 (the Petition) at Volumes I and II.

[2] *Id.*, at Volume III.

[3] *See* Volume I of the Petition at 2.

[4] *See* the letters from the Department to Petitioner entitled, "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid (HEDP) from the People's Republic of China: Supplemental Questions," dated April 5, 2016 (General Issues Supplemental Questionnaire) and "Petition for the Imposition of Antidumping Duties on Imports of 1-Hydroxyethylidene-1,1-Diphosphonic Acid (HEDP) from the People's Republic of China: Supplemental Questions" dated April 5, 2016.

[5] *See* the letter from Petitioner to the Department entitled, "Petition for the Imposition of Antidumping and Countervailing Duties, Supplemental Submission, Petition Volume I: 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China," dated April 7, 2016 (General Issues Supplement); *see also* the letter from Petitioner to the Department entitled, "Petition for the Imposition of Antidumping and Countervailing Duties, Supplemental Submission, Petition Volume II: 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China," dated April 8, 2016 (AD Supplemental Response); *see also* the letter from Petitioner to the Department entitled, "Petition for the Imposition of Antidumping and Countervailing Duties, Supplemental Submission, Petition Volume II: 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China," dated April 8, 2016 (Second AD Supplemental Response).

[6] *See* the "Determination of Industry Support for the Petition" section below.

[7] *See* General Issues Supplemental Questionnaire at 2; *see also* General Issues Supplement at 2.

[8] *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997).

Filing Requirements

All submissions to the Department must be filed electronically using Enforcement & Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).[9] An electronically filed document must be received successfully in its entirety by the time and date when it is due. Documents excepted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with Enforcement & Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Comments on Product Characteristics for AD Questionnaires

The Department requests comments from interested parties regarding the appropriate physical characteristics of HEDP to be reported in response to the Department's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant factors and costs of production accurately as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) General product characteristics and (2) product-comparison criteria. We note that it is not always appropriate to use all product characteristics as product-comparison criteria. We base product-comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe HEDP, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaire, all comments must be filed by 5:00 p.m. ET on Tuesday, May 10, 2016, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on Tuesday, May 17, 2016. All comments and submissions to the Department must be filed electronically using ACCESS, as explained above, on the record of this less-than-fair-value investigation.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the "industry."

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,[10] they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[11]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation" (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the Petition).

With regard to the domestic like product, Petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that HEDP, as defined in the scope, constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product.[12]

In determining whether Petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the "Scope of the Investigation," in Appendix I of this notice. To establish industry support, Petitioner provided its 2015 production of the domestic like product.[13] Petitioner states that it is the only known producer of HEDP in the United States; therefore, the Petition is supported by 100 percent of the U.S. industry.[14]

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[9] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014) for details of the Department's electronic filing requirements, which went into effect on August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf*.

[10] *See* section 771(10) of the Act.

[11] *See USEC, Inc.* v. *United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[12] For a discussion of the domestic like product analysis in this case, *see* Antidumping Duty Investigation Initiation Checklist: 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China (PRC AD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China (Attachment II). This checklist is dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

[13] *See* Volume I of the Petition, at 5 and Exhibit I–1.

[14] *Id.*

Our review of the data provided in the Petition and other information readily available to the Department indicates that Petitioner has established industry support.[15] First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.*, polling).[16] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[17] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[18] Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

The Department finds that Petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the AD investigation that it is requesting the Department initiate.[19]

Allegations and Evidence of Material Injury and Causation

Petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (NV). In addition, Petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[20]

Petitioner contends that the industry's injured condition is illustrated by reduced market share; underselling and price suppression or depression; decline in shipments and production; decline in employment; decline in financial performance; and lost sales and revenues.[21] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.[22]

Allegations of Sales at Less-Than-Fair Value

The following is a description of the allegation of sales at less-than-fair value upon which the Department based its decision to initiate an investigation of imports of HEDP from the PRC. The sources of data for the deductions and adjustments relating to U.S. price and NV are discussed in greater detail in the initiation checklist.

Export Price

Petitioner based U.S. price on an offer for sale for HEDP from a Chinese producer.[23] Petitioner made deductions from U.S. price for movement expenses consistent with the delivery terms.[24]

Normal Value

Petitioner stated that the Department has found the PRC to be a non-market economy (NME) country in every administrative proceeding in which the PRC has been involved.[25] In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product is appropriately based on factors of production (FOPs) valued in a surrogate market economy country, in accordance with section 773(c) of the Act. In the course of this investigation, all parties, and the public, will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters.

Petitioner claims that Mexico is an appropriate surrogate country because it is a market economy that is at a level of economic development comparable to that of the PRC and it is a significant producer of comparable merchandise.[26]

Based on the information provided by Petitioner, we believe it is appropriate to use Mexico as a surrogate country for initiation purposes. Interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOPs within 30 days before the scheduled date of the preliminary determination.

Factors of Production

In the case of chemical inputs, Petitioner explained that its major chemical inputs likely differ from those used by most HEDP manufacturers in the PRC due to differences in production processes.[27] To approximate the Chinese production process (which begins with phosphorus trichloride), Petitioner used the chemical formula and known molecular weights of the various chemical inputs and resulting by-product for the Chinese production method.[28] Petitioner believes that this methodology provides a reasonably accurate reflection of presumed consumption rates for Chinese HEDP producers.[29] Petitioner based the FOPs for labor, energy, and packing on its own consumption rates for producing 60-percent aqueous solution HEDP (which is substantially identical to the HEDP product offered for sale in the U.S. market by a Chinese producer), as it did not have access to records of the consumption rates of PRC producers of the subject merchandise.[30] Petitioner believes that these usage rates reasonably approximate those incurred by Chinese HEDP producers.[31]

Valuation of Raw Materials

Petitioner valued the FOPs for raw materials (*e.g.*, phosphorus trichloride, glacial acetic acid, hydrochloric acid, *etc.*) using reasonably available, public import data for Mexico obtained from the Global Trade Atlas (GTA) for the POI.[32] Petitioner excluded all import values from countries previously determined by the Department to maintain broadly available, non-industry-specific export subsidies and from countries previously determined by the Department to be NME countries.[33] In addition, in accordance with the Department's practice, the average import value excludes imports that were labeled as originating from an unidentified country.[34] The Department determines that the surrogate values used by Petitioner are reasonably available and, thus, are acceptable for purposes of initiation.

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[15] *See* PRC AD Initiation Checklist, at Attachment II.

[16] *See* section 732(c)(4)(D) of the Act; *see also* PRC AD Initiation Checklist, at Attachment II.

[17] *See* PRC AD Initiation Checklist, at Attachment II.

[18] *Id.*

[19] *Id.*

[20] *See* General Issues Supplement, at 2.

[21] *See* Volume I of the Petition, at 10–13, 19–38 and Exhibit I–5; *see also* General Issues Supplement, at 2.

[22] *See* PRC AD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China.

[23] *See* Volume II of the Petition, at 4 and Exhibit II–5; *see also* AD Supplemental Response at Questions 1–2 and Exhibit Supp (AD) II–5; *see also* Second AD Supplemental Response at the attachment.

[24] *Id.*, at 4–5 and Exhibits II–6 through II–10.

[25] *Id.*, at 2.

[26] *See* Volume II of the Petition, at 2–4 and Exhibits II–1—II–4.

[27] *Id.*, at 5 and Exhibit II–13; *see also* AD Supplemental Response at Question 6.

[28] *See* AD Supplemental Response at Question 3; *see also* Volume II of the Petition at Exhibit II–13.

[29] *See* AD Supplemental Response at Question 3.

[30] *See* Volume II of the Petition, at 5–8 and Exhibit II–13; *see also* AD Supplemental Response at Question 4.

[31] *Id.*, at Exhibit II–13; *see also* AD Supplemental Response at Question 4.

Valuation of Water

Petitioner valued water using data from the Mexican government's National Water Commission of Mexico publication, "Statistics on Water in Mexico, 2010 edition." [35] Petitioner converted the water rates to U.S. dollars using the average exchange rate during the POI.[36] Petitioner used a POI-average consumer price index adjustment to adjust water rates for inflation in Mexico.[37]

Valuation of Labor

Petitioner valued labor using the most-recently-available Mexican labor data published by the United Nations' International Labour Organization (ILO).[38] Specifically, Petitioner relied on data pertaining to wages and benefits earned by Mexican workers engaged in "manufacture of other chemical products" in the Mexican economy.[39] Petitioner converted to U.S. dollars using the average exchange rate during the POI.[40]

Valuation of Packing Materials

Petitioner valued the packing materials used by PRC producers (intermediate bulk carriers) using import data obtained from GTA for the POI.[41]

Valuation of Energy

Petitioner calculated energy usage based upon its own production experience associated with electricity and steam produced by natural gas.[42] Petitioner valued electricity based on the industry rate identified in the International Energy Agency's 2015 "Key World Energy Statistics." [43] This information was reported in U.S. dollars per unit and multiplied by Petitioner's factor usage rates.[44] Petitioner valued steam based on imports of natural gas (from GTA data for the POI) converted to steam based on relevant conversion factors.[45]

Valuation of Factory Overhead, Selling, General and Administrative Expenses, and Profit

Petitioner calculated ratios for factory overhead, selling, general and administrative expenses and profit based on the most recent audited financial statements for Grupo Pochteca, S.A.B. de C.V. and Subsidiaries, a manufacturer of sodium hexametaphosphate (SHMP),[46] which the ITC has found to be a polyphosphate chelating agent similar to HEDP.[47] Petitioner contends that SHMP and HEDP are comparable merchandise; it uses SHMP because HEDP production exists only in in the United States, the PRC, India, and the United Kingdom (*i.e.,* does not in exist in any potential surrogate country).[48]

Fair Value Comparisons

Based on the data provided by Petitioner, there is reason to believe that imports of HEDP from the PRC are being, or are likely to be, sold in the United States at less-than-fair value. Based on comparisons of EP to NV, in accordance with section 773(c) of the Act, the estimated dumping margin for HEDP from the PRC is 96 percent.[49]

Initiation of Less-Than-Fair-Value Investigation

Based upon the examination of the AD Petition on HEDP from the PRC, we find that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an AD investigation to determine whether imports of HEDP from the PRC are being, or are likely to be, sold in the United States at less-than-fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we intend to make our preliminary determination no later than 140 days after the date of this initiation.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015, which made numerous amendments to the AD and CVD law.[50] The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the ITC.[51] The amendments to sections 771(15), 773, 776, and 782 of the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this AD investigation.[52]

Respondent Selection

Petitioner named 13 companies as producers/exporters of HEDP.[53] In accordance with our standard practice for respondent selection in cases involving NME countries, we intend to issue quantity and value (Q&V) questionnaires to producers/exporters of merchandise subject to the investigation[54] and base respondent selection on the responses received. In addition, the Department will post the Q&V questionnaire along with filing instructions on the Enforcement and Compliance Web site at *http://www.trade.gov/enforcement/news.asp.*

Producers/exporters of HEDP from the PRC that do not receive Q&V questionnaires by mail may still submit a response to the Q&V questionnaire and can obtain a copy from the Enforcement & Compliance Web site. The Q&V response must be submitted by the relevant PRC exporters/producers no later than March 1, 2016, which is two weeks from the signature date of this notice. All Q&V responses must be filed electronically via ACCESS.

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[32] *See* Volume II of the Petition at 6 and Exhibit II–16.

[33] *Id.*

[34] *Id.*

[35] *Id.,* at 7 and Exhibit II–19; *see also* AD Supplemental Response at Question 7.

[36] *See* AD Supplemental Response at Question 7 and Exhibits Supp (AD) II–14 and Supp (AD) II–24.

[37] *See* Volume II of the Petition, at Exhibit II–23; *see also* AD Supplemental Response at Question 9 Exhibit Supp (AD) II–15.

[38] *Id.,* at 6 and Exhibit II–17.

[39] *Id.*

[40] *Id.; see also* AD Supplemental Response at Question 8 and Exhibit Supp (AD) II–22.

[41] *See* Volume II of the Petition, at 7 and Exhibit II–15.

[42] *Id.*

[43] *Id.; see also* Exhibit II–18.

[44] *Id.*

[45] *Id.,* at 7 and Exhibit II–20.

[46] *Id.,* at 7 and Exhibit II–21.

[47] *Id.,* at 3–4.

[48] *Id.,* at 3.

[49] *Id.,* at 8 and Exhibit II–24; *see also* AD Supplemental Response at Question 10 and Exhibit Supp (AD) II–24; *see also* PRC AD Initiation Checklist. Petitioner also provided a margin calculated using a normal value calculated based on its own production process and factor usage rates; however, Petitioner indicated that Chinese producers do not use this production process, *see* PRC AD Initiation Checklist.

[50] *See* Trade Preferences Extension Act of 2015, Pub. L. 114–27, 129 Stat. 362 (2015).

[51] *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015,* 80 FR 46793 (August 6, 2015) (*Applicability Notice*).

[52] *Id.* at 46794–95. The 2015 amendments may be found at *https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.*

[53] *See* Volume I of the Petition at 9 and Exhibit I–3.

[54] *See* Appendix I, "Scope of the Investigation."

Separate Rates

In order to obtain separate-rate status in an NME investigation, exporters and producers must submit a separate-rate application.[55] The specific requirements for submitting a separate-rate application in the PRC investigation are outlined in detail in the application itself, which is available on the Department's Web site at *http://enforcement.trade.gov/nme/nme-sep-rate.html*. The separate-rate application will be due 30 days after publication of this initiation notice.[56] Exporters and producers who submit a separate-rate application and have been selected as mandatory respondents will be eligible for consideration for separate-rate status only if they respond to all parts of the Department's AD questionnaire as mandatory respondents. The Department requires that respondents from the PRC submit a response to both the Q&V questionnaire and the separate-rate application by their respective deadlines in order to receive consideration for separate-rate status.

Use of Combination Rates

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation. The Separate Rates and Combination Rates Bulletin states:

> {w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME Investigation will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.[57]

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the government of the PRC via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of HEDP from the PRC are materially injuring or threatening material injury to a U.S. industry.[58] A negative ITC determination will result in the investigation being terminated;[59] otherwise, this investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). Any party, when submitting factual information, must specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted[60] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[61] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Please review the regulations prior to submitting factual information in this investigation.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR part 351, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR part 351 expires. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in this investigation.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[62] Parties are hereby reminded that revised certification requirements are in effect for company/government officials, as well as their representatives. Investigations initiated on the basis of petition filed on or after August 16, 2013, and other segments of any AD or CVD proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule.*[63] The Department intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

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[55] *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation involving Non-Market Economy Countries (April 5, 2005), available at *http://enforcement.trade.gov/policy/bull05-1.pdf* (Policy Bulletin 05.1).

[56] Although in past investigations this deadline was 60 days, consistent with 19 CFR 351.301(a), which states that "the Secretary may request any person to submit factual information at any time during a proceeding," this deadline is now 30 days.

[57] *See* Policy Bulletin 05.1 at 6 (emphasis added).

[58] *See* section 733(a) of the Act.

[59] *Id.*

[60] *See* 19 CFR 351.301(b).

[61] *See* 19 CFR 351.301(b)(2).

[62] *See* section 782(b) of the Act.

[63] *See Certification of Factual Information to Import Administration during Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* frequently asked questions regarding the *Final Rule,* available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

Notification to Interested Parties

Interested parties must submit applications for disclosure under administrative protective order (APO) in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed in 19 CFR 351.103(d)).

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: April 20, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix I—Scope of the Investigation

The merchandise covered by this investigation includes all grades of aqueous acidic (non-neutralized) concentrations of 1-hydroxyethylidene-1, 1-diphosphonic acid (HEDP), also referred to as hydroxyethylidenendiphosphonic acid, hydroxyethanediphosphonic acid, acetodiphosphonic acid, and etidronic acid. The CAS (Chemical Abstract Service) registry number for HEDP is 2809–21–4.

The merchandise subject to this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2931.90.9043. It may also enter under HTSUS subheadings 2811.19.6090 and 2931.90.9041. While HTSUS subheadings and the CAS registry number are provided for convenience and customs purposes only, the written description of the scope of this investigation is dispositive.

[FR Doc. 2016–09881 Filed 4–27–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Submission for OMB Review; Comment Request

AGENCY: International Trade Administration, Commerce.

On behalf of the Committee for the Implementation of Textile Agreements (CITA), the Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration, Committee for the Implementation of Textile Agreements.

Title: Interim Procedures for Considering Requests under the Commercial Availability Provision of the United States-Panama Trade Promotion Agreement.

Form Number(s): N/A.

OMB Control Number: 0625–0273.

Type of Request: Regular submission.

Burden Hours: 89.

Number of Respondents: 16 (10 for Requests; 3 for Responses; 3 for Rebuttals).

Average Hours per Response: 8 hours per Request; 2 hours per Response; and 1 hour per Rebuttal.

Needs and Uses: Title II, Section 203(o) of the United States-Panama Trade Promotion Agreement Implementation Act (the "Act") [Public Law 112–43] implements the commercial availability provision provided for in Article 3.25 of the United States-Panama Trade Promotion Agreement (the "Agreement"). The Agreement entered into force on October 31, 2012. Subject to the rules of origin in Annex 4.1 of the Agreement, and pursuant to the textile provisions of the Agreement, a fabric, yarn, or fiber produced in Panama or the United States and traded between the two countries is entitled to duty-free tariff treatment. Annex 3.25 of the Agreement also lists specific fabrics, yarns, and fibers that the two countries agreed are not available in commercial quantities in a timely manner from producers in Panama or the United States. The items listed in Annex 3.25 are commercially unavailable fabrics, yarns, and fibers. Articles containing these items are entitled to duty-free or preferential treatment despite containing inputs not produced in Panama or the United States.

The list of commercially unavailable fabrics, yarns, and fibers may be changed pursuant to the commercial availability provision in Chapter 3, Article 3.25, Paragraphs 4–6 of the Agreement. Under this provision, interested entities from Panama or the United States have the right to request that a specific fabric, yarn, or fiber be added to, or removed from, the list of commercially unavailable fabrics, yarns, and fibers in Annex 3.25 of the Agreement.

Pursuant to Chapter 3, Article 3.25, paragraph 6 of the Agreement, which requires that the President publish procedures for parties to exercise the right to make these requests, Section 203(o)(4) of the Act authorizes the President to establish procedures to modify the list of fabrics, yarns, or fibers not available in commercial quantities in a timely manner in either the United States or Panama as set out in Annex 3.25 of the Agreement. The President delegated the responsibility for publishing the procedures and administering commercial availability requests to the Committee for the Implementation of Textile Agreements ("CITA"), which issues procedures and acts on requests through the U.S. Department of Commerce, Office of Textiles and Apparel ("OTEXA") (See Proclamation No. 8894, 77 FR 66507, November 5, 2012).

The intent of the Commercial Availability Procedures is to foster the use of U.S. and regional products by implementing procedures that allow products to be placed on or removed from a product list, in a timely manner, and in a manner that is consistent with normal business practice. The procedures are intended to facilitate the transmission of requests; allow the market to indicate the availability of the supply of products that are the subject of requests; make available promptly, to interested entities and the public, information regarding the requests for products and offers received for those products; ensure wide participation by interested entities and parties; allow for careful review and consideration of information provided to substantiate requests and responses; and provide timely public dissemination of information used by CITA in making commercial availability determinations.

CITA must collect certain information about fabric, yarn, or fiber technical specifications and the production capabilities of Panamanian and U.S. textile producers to determine whether certain fabrics, yarns, or fibers are available in commercial quantities in a timely manner in the United States or Panama, subject to Section 203(o) of the Act.

Affected Public: Business or other for-profit.

Frequency: Varies.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: April 25, 2016.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2016–09926 Filed 4–27–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–046]

1-Hydroxyethylidene-1, 1-Diphosphonic Acid From People's Republic of China: Initiation of Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

DATES: *Effective Date:* February 20, 2016.

FOR FURTHER INFORMATION CONTACT: Davina Friedmann at (202) 482–0698, Robert James at (202) 482–0649, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petition

On March 31, 2016, the Department of Commerce (Department) received a countervailing duty (CVD) petition concerning imports of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid (HEDP) from the People's Republic of China (the PRC), filed in proper form on behalf of Compass Chemical International, LLC (Petitioner). The CVD petition was accompanied by an antidumping duty (AD) petition, also concerning imports of HEDP from the PRC.[1] Petitioner is a domestic producer of HEDP.[2]

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), Petitioner alleges that the Government of the PRC (GOC) is providing countervailable subsidies (within the meaning of sections 701 and 771(5) of the Act) with respect to imports of HEDP from the PRC, and that imports of HEDP from the PRC are materially injuring, and threaten material injury to, the domestic industry producing HEDP in the United States. Also, consistent with section 702(b)(1) of the Act, for those alleged programs on which we have initiated a CVD investigation, the Petition is accompanied by information reasonably available to Petitioner supporting its allegations.

The Department finds that Petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act, and that Petitioner has demonstrated sufficient industry support with respect to the initiation of the investigation Petitioner is requesting.[3]

Period of Investigation

The period of investigation is January 1, 2015, through December 31, 2015.[4]

Scope of the Investigation

The product covered by this investigation is HEDP from the PRC. For a full description of the scope of this investigation, *see* "Scope of Investigation" at Appendix I of this notice.

Comments on Scope of the Investigation

During our review of the Petition, the Department issued questions to, and received responses from, Petitioner pertaining to the proposed scope to ensure that the scope language in the Petition would be an accurate reflection of the products for which the domestic industry is seeking relief.[5]

As discussed in the preamble to the Department's regulations,[6] we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.*, scope). The Department will consider all comments received from interested parties, and if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information (*see* 19 CFR 351.102(b)(21)), all such factual information should be limited to public information. In order to facilitate preparation of its questionnaire, the Department requests all interested parties to submit such comments by 5:00 p.m. Eastern Time (ET) on Tuesday, May 10, 2016, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on Friday, May 20, 2016, which is ten calendar days after the initial comments deadline.

The Department requests that any factual information the parties consider relevant to the scope of the investigation be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact the Department and request permission to submit the additional information. All such comments also must be filed on the record of the concurrent AD investigation.

Filing Requirements

All submissions to the Department must be filed electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).[7] An electronically-filed document must be received successfully in its entirety by the time and date it is due. Documents excepted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Consultations

Pursuant to section 702(b)(4)(A)(i) of the Act, the Department notified representatives of the GOC of the receipt of the Petition. Also, in accordance with section 702(b)(4)(A)(ii) of the Act, the Department provided representatives of the GOC the opportunity for consultations with respect to the CVD petition.[8] In lieu of consultation with the Department, the GOC submitted comments to the Department on the alleged subsidy programs.[9]

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the "industry."

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[1] *See* "Petition for the Imposition of Antidumping and Countervailing Duties: *1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China,*" dated March 31, 2016 (Petitions).

[2] *See* Volume I of the Petitions, at 2, and Exhibit I–1.

[3] *See* "Determination of Industry Support for the Petition" below.

[4] *See* 19 CFR 351.204(b)(2).

[5] *See* Letter from Petitioner to the Department, "Petitioner for the Imposition of Antidumping and Countervailing Duties, Supplemental Submission, Petition Volume I: *1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China,*" dated April 7, 2016 (Petition Supplemental Information).

[6] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[7] *See* 19 CFR 351.303 (for general filing requirements); *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011), for details of the Department's electronic filing requirements, which went into effect on August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

[8] *See* Letter of invitation from the Department regarding, "Countervailing Duty Petition on 1-Hydroxyethylidene-1, 1-DIphosphonic Acid from the People's Republic of China," dated April 7, 2016.

[9] *See* Department Memorandum, "Countervailing Duty Petition on 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: GOC Comments on Alleged Subsidy Programs," dated April 19, 2016.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,[10] they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[11]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation" (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the Petition).

With regard to the domestic like product, Petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that HEDP, as defined in the scope, constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product.[12]

In determining whether Petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the "Scope of the Investigation," in Appendix I of this notice. To establish industry support, Petitioner provided its 2015 production of the domestic like product.[13] Petitioner states that it is the only known producer of HEDP in the United States; therefore, the Petition is supported by 100 percent of the U.S. industry.[14]

Our review of the data provided in the Petition and other information readily available to the Department indicates that Petitioner has established industry support.[15] First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.*, polling).[16] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[17] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[18] Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.

The Department finds that Petitioner filed the Petition on behalf of the domestic industry because it is an interested parties as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the CVD investigation that it is requesting the Department initiate.[19]

Injury Test

Because the PRC is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

Petitioner alleges that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, Petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[20]

Petitioner contends that the industry's injured condition is illustrated by reduced market share; underselling and price suppression or depression; decline in shipments and production; decline in employment; decline in financial performance; and lost sales and revenues.[21] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.[22]

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[10] *See* section 771(10) of the Act.

[11] *See USEC, Inc.* v. *United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[12] For a discussion of the domestic like product analysis in this case, *see* Countervailing Duty Investigation Initiation Checklist: 1 Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China (PRC CVD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China (Attachment II). This checklist is dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

[13] *See* Volume I of the Petition, at 5 and Exhibit I–1.

[14] *Id.*

[15] *See* PRC CVD Initiation Checklist, at Attachment II.

[16] *See* section 702(c)(4)(D) of the Act; *see also* PRC CVD Initiation Checklist, at Attachment II.

[17] *See* PRC CVD Initiation Checklist, at Attachment II.

[18] *Id.*

[19] *Id.*

[20] *See* General Issues Supplement, at 2.

[21] *See* Volume I of the Petition, at 10–13, 19–38 and Exhibit I–5; *see also* General Issues Supplement, at 2.

[22] *See* PRC CVD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China.

Initiation of Countervailing Duty Investigation

Section 702(b)(1) of the Act requires the Department to initiate a CVD investigation whenever an interested party files a CVD petition on behalf of an industry that: (1) Alleges elements necessary for an imposition of a duty under section 701(a) of the Act; and (2) is accompanied by information reasonably available to Petitioner supporting the allegations.

Petitioner alleges that producers/exporters of HEDP in the PRC benefit from countervailable subsidies bestowed by the GOC. The Department examined the Petition and finds that it complies with the requirements of section 702(b)(1) of the Act. Therefore, in accordance with section 702(b)(1) of the Act, we are initiating a CVD investigation to determine whether manufacturers, producers, or exporters of HEDP from the PRC receive countervailable subsidies from the GOC and various authorities thereof.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015, which made numerous amendments to the AD and CVD law.[23] The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the ITC.[24] The amendments to sections 776 and 782 of the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this CVD investigation.[25]

Based on our review of the petition, we find that there is sufficient information to initiate a CVD investigation on the four remaining alleged programs in the PRC.[26] For a full discussion of the basis for our decision to initiate on each program, *see* the PRC CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

Respondent Selection

Following standard practice in CVD investigations, the Department will, where appropriate, select respondents based on U.S. Customs and Border Protection ("CBP") data for U.S. imports of HEDP during the period of investigation. For this investigation, the Department will release U.S. Customs and Border Protection (CBP) data for U.S. imports of subject merchandise during the period of investigation under the following Harmonized Tariff Schedule of the United States numbers: 2931.90.9043. Subject merchandise may also enter under HTSUS subheadings 2811.19.6090 and 2931.90.9041. We intend to release the CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO within five business days of the announcement of this **Federal Register** notice. Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found at *http://enforcement.trade.gov/apo/.*

Interested parties may submit comments regarding the CBP data and respondent selection by 5:00 p.m. ET on the seventh calendar day after publication of this notice. Comments must be filed in accordance with the filing requirements stated above. If respondent selection is necessary, we intend to base our decision regarding respondent selection upon comments received from interested parties and our analysis of the record information within 20 days of publication of this notice.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the GOC *via* ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each known exporter (as named in the Petition), consistent with 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of HEDP from the PRC are materially injuring, or threatening material injury to, a U.S. industry.[27] A negative ITC determination will result in the investigation being terminated;[28] otherwise, this investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). The regulation requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Parties should review the regulations prior to submitting factual information in this investigation.

Extension of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301 expires. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Review *Extension of Time Limits; Final Rule*, 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm*, prior to submitting factual information in this investigation.

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[23] *See* Trade Preferences Extension Act of 2015, Pub. L. 114–27, 129 Stat. 362 (2015).

[24] *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015,* 80 FR 46793 (August 6, 2015) (*Applicability Notice*). The 2015 amendments may be found at *https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.*

[25] *Id.,* at 46794–95.

[26] Petitioner initially alleged nine subsidy programs, but subsequently withdrew allegations on five of those programs. *See* Volume III of the Petition, at 18–30; see also Petition Supplemental Information at 1–3.

[27] *See* section 703(a)(2) of the Act.

[28] *See* section 703(a)(1) of the Act.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[29] Parties are hereby reminded that revised certification requirements are in effect for company/government officials, as well as their representatives. Investigations initiated on the basis of petitions filed on or after August 16, 2013, and other segments of any AD or CVD proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule*.[30] The Department intends to reject factual submissions if the submitting party does not comply with the applicable revised certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures*, 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.*, the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 702 and 777(i) of the Act.

Dated: April 20, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix I—Scope of the Investigation

The merchandise covered by this investigation includes all grades of aqueous acidic (non-neutralized) concentrations of 1-hydroxyethylidene-1, 1-diphosphonic acid (HEDP), also referred to as hydroxyethylidenendiphosphonic acid, hydroxyethanediphosphonic acid, acetodiphosphonic acid, and etidronic acid. The CAS (Chemical Abstract Service) registry number for HEDP is 2809–21–4.

The merchandise subject to this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2931.90.9043. It may also enter under HTSUS subheadings 2811.19.6090 and 2931.90.9041. While HTSUS subheadings and the CAS registry number are provided for convenience and customs purposes only, the written description of the scope of this investigation is dispositive.

[FR Doc. 2016–09882 Filed 4–27–16; 8:45 am]

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[29] *See* section 782(b) of the Act.

[30] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) ("*Final Rule*"); *see also* frequently asked questions regarding the *Final Rule*, available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf*.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–896]

Magnesium Metal From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On January 5, 2016, the Department of Commerce ("Department") published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on magnesium metal from the People's Republic of China ("PRC") covering the period April 1, 2014, through March 31, 2015.[1] This review covers two PRC companies, Tianjin Magnesium International, Co., Ltd. ("TMI") and Tianjin Magnesium Metal Co., Ltd. ("TMM"). The Department gave interested parties an opportunity to comment on the *Preliminary Results*, but we received no comments. Hence, these final results are unchanged from the *Preliminary Results*, and we continue to find that TMI and TMM did not have reviewable entries during the period of review ("POR").

DATES: *Effective Date:* April 28, 2016.

FOR FURTHER INFORMATION CONTACT: James Terpstra or Brendan Quinn, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3965 or (202) 482–5848, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 5, 2016, the Department published the *Preliminary Results*.[2] We invited interested parties to comment on the *Preliminary Results*, but no comments were received. Also, as explained in the memorandum from the Acting Assistant Secretary for Enforcement & Compliance, the Department exercised its authority to toll all administrative deadlines due to the recent closure of the Federal Government.[3] As a consequence, all deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the final results is now May 10, 2016.

The Department conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended ("the Act").

Scope of the Order

The product covered by this antidumping duty order is magnesium metal from the PRC, which includes primary and secondary alloy magnesium metal, regardless of chemistry, raw material source, form, shape, or size. Magnesium is a metal or alloy containing by weight primarily the element magnesium. Primary magnesium is produced by decomposing raw materials into magnesium metal. Secondary magnesium is produced by recycling magnesium-based scrap into magnesium metal. The magnesium covered by this order includes blends of primary and secondary magnesium.

The subject merchandise includes the following alloy magnesium metal products made from primary and/or secondary magnesium including, without limitation, magnesium cast into ingots, slabs, rounds, billets, and other shapes; magnesium ground, chipped, crushed, or machined into rasping, granules, turnings, chips, powder, briquettes, and other shapes; and products that contain 50 percent or greater, but less than 99.8 percent, magnesium, by weight, and that have been entered into the United States as conforming to an "ASTM Specification for Magnesium Alloy"[4] and are thus outside the scope of the existing antidumping orders on magnesium from the PRC (generally referred to as "alloy" magnesium).

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[1] *See Magnesium Metal From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2014–2015*, 81 FR 220 (January 5, 2016) ("*Preliminary Results*").

[2] *Id.*

[3] *See* Memorandum to the File from Ron Lorentzen, Acting A/S for Enforcement & Compliance, "Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas," dated January 27, 2016.

The scope of this order excludes: (1) All forms of pure magnesium, including chemical combinations of magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, that do not conform to an "ASTM Specification for Magnesium Alloy"[5]; (2) magnesium that is in liquid or molten form; and (3) mixtures containing 90 percent or less magnesium in granular or powder form by weight and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures, including lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nephaline syenite, feldspar, alumina (Al203), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomite lime, and colemanite.[6]

The merchandise subject to this order is classifiable under items 8104.19.00, and 8104.30.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS items are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Final Determination of No Shipments

As explained, in the *Preliminary Results,* the Department found that TMI and TMM did not have reviewable entries during the POR.[7] Also in the *Preliminary Results,* the Department stated that consistent with its recently announced refinement to its assessment practice in non-market economy ("NME") cases, it is appropriate not to rescind the review in part in this circumstance but, rather, to complete the review with respect to TMI and TMM and to issue appropriate instructions to CBP based on the final results of the review.[8]

After issuing the *Preliminary Results,* the Department received no comments from interested parties, nor has it received any information that would cause it to revisit its preliminary determination. Therefore, for these final results, the Department continues to find that TMI and TMM did not have any reviewable entries during the POR.

Assessment Rates

The Department determined, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.[9] The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

Additionally, consistent with the Department's refinement to its assessment practice in NME cases, because the Department determined that TMI and TMM had no shipments of subject merchandise during the POR, any suspended entries that entered under TMI's and TMM's antidumping duty case number (*i.e.,* at that exporter's rate) will be liquidated at the PRC-wide rate.[10]

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice of final results of the administrative review, as provided by section 751(a)(2)(C) of the Act: (1) For TMI and TMM, which claimed no shipments, the cash deposit rate will remain unchanged from the rate assigned to TMI and TMM in the most recently completed review of the companies; (2) for previously investigated or reviewed PRC and non-PRC exporters who are not under review in this segment of the proceeding but who have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 141.49 percent;[11] and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing these final results and this notice in accordance with sections 751(a)(1) and 777(i) of the Act.

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[4] The meaning of this term is the same as that used by the American Society for Testing and Materials in its Annual Book for ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys.

[5] The material is already covered by existing antidumping orders. *See Notice of Antidumping Duty Orders: Pure Magnesium from the People's Republic of China, the Russian Federation and Ukraine; Notice of Amended Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium from the Russian Federation,* 60 FR 25691 (May 12, 1995); and *Antidumping Duty Order: Pure Magnesium in Granular Form from the People's Republic of China,* 66 FR 57936 (November 19, 2001).

[6] This third exclusion for magnesium-based reagent mixtures is based on the exclusion for reagent mixtures in the 2000–2001 investigations of magnesium from China, Israel, and Russia. *See Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form From the People's Republic of China,* 66 FR 49345 (September 27, 2001); *Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Israel,* 66 FR 49349 (September 27, 2001); *Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation,* 66 FR 49347 (September 27, 2001). These mixtures are not magnesium alloys, because they are not combined in liquid form and cast into the same ingot.

[7] *See Preliminary Results,* 81 FR at 221.

[8] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) ("*Assessment Practice Refinement*") and the "Assessment Rates" section, below.

[9] *See* 19 CFR 351.212(b).

[10] *See Assessment Practice Refinement,* 76 FR 65694.

[11] *See Notice of Antidumping Duty Order: Magnesium Metal From the People's Republic of China,* 70 FR 19928 (April 15, 2005).

Dated: April 14, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–09884 Filed 4–27–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Opportunity for U.S. Companies To Submit Smart City Products, Services, and Capabilities for Showcasing as Export Listings in the Upcoming Smart Cities, Regions and Communities: Global Tools of Engagement

AGENCY: U.S. Department of Commerce, International Trade Administration.

ACTION: Notice of Opportunity for Listing.

SUMMARY: Located within the U.S. Department of Commerce International Trade Administration, Global Markets (GM) promotes trade and investment. GM works to improve the global business environment and helps U.S. organizations compete abroad. In furtherance of GM's mission and the U.S. Department of Commerce's strategic goal of increasing trade and investment opportunities for U.S. companies globally, GM is offering a new for-fee service for U.S. exporters to be listed in an Export Listing Guide as part of a larger Smart Cities Resource Guide inventorying the various initiatives and programming related to Smart Cities within the U.S. Department of Commerce. The Export Listing Guide aims to showcase U.S. goods and services in the various sectors comprising Smart City urban development globally. For the purposes of the Export Listing Guide, 'Smart City' is a broad urban development term generally referring to urban planning and infrastructure development focused around the integration of multiple information and communications technology (ICT) solutions to better manage a city's municipal operations; and to provide real time citizen feedback for enhanced city governance. General domains of Smart City products and services can be categorized as: Energy & power; water & sanitation; information and communications technology; transportation; healthcare; design & planning; infrastructure financing; environmental protection/safety; and/or governance solutions. Please see **SUPPLEMENTARY INFORMATION** for additional detail regarding submission requirements.

DATES: Submissions and payment must be received no later than 5:00 p.m. EDT on May 25, 2016 for publication in the 2016 edition. Please reference the 'Submissions Instructions' section for submission guidance.

ADDRESSES: Please submit showcase pages by email to Rachael Croft, International Trade Specialist, Global Markets, at *Rachael.Croft@trade.gov* and Vinay Singh, Senior Advisor, Global Markets, at *Vinay.Singh@trade.gov.*

FOR FURTHER INFORMATION CONTACT: Rachael Croft, International Trade Specialist, Global Markets, U.S. Department of Commerce, Telephone: 202–482–3048 or Email: *Rachael.Croft@trade.gov* or Vinay Vijay Singh, Senior Advisor, Global Markets, U.S. Department of Commerce, Telephone: 202–482–7948 or Email: *vinay.singh@trade.gov.*

SUPPLEMENTARY INFORMATION: U.S. industry is competitive across various infrastructure and technology sectors that contribute to global Smart City, Regional and Community development. The goal of the Export Listing Guide is to promote U.S. goods and services that can be exported to global cities as they urbanize within a broader U.S. Department of Commerce smart city resource guide.

The U.S. Department of Commerce will publish this smart city resource guide for distribution at relevant trade fairs and exhibitions globally. The U.S. Department of Commerce will also host a digital version of the Export Listing Guide.

Criteria To Be Eligible for Listing

(1) A U.S. Company must meet the eligibility requirements for Global Markets/U.S. & Foreign Commercial Service for-fee export assistance services, which requires that a company be a U.S. exporter that exports or seeks to export goods or services produced in the United States. To qualify as a U.S. exporter, the submitter must be: (a) A United States citizen; (b) a corporation, partnership or other association created under the laws of the United States or of any State; or (c) a foreign corporation, partnership, or other association, more than 95 percent of which is owned by persons described in (a) and (b) above. To qualify as a good or service produced in the United States, the good or service must be either of United States origin or have at least 51% U.S. content if not of United States origin.

(2) A U.S. Company submission should showcase currently available U.S. goods and services exportable and applicable to Smart City urban planning and infrastructure development with export potential in the following sectors: Energy & power; water & sanitation; information and communications technology; transportation; healthcare; design & planning; infrastructure financing; environmental protection/safety; and/or governance solutions. Preference may be given to submissions focused on priority global market needs in the (1) energy & power; (2) water and sanitation; and (3) transportation smart sectors leveraging state of the art technologies.

(3) Provision of adequate information on the company's products and/or services.

In addition to the above criteria, in making selection decisions, GM will consider the diversity of the submissions to arrive at an Export Listing Guide that will (a) represent the diversity of business sectors applicable to smart cities, as well as a cross-section of small, medium, and large-sized firms; (b) represent multiple technologies, products, and services within each sector; and (c) include new exporters in addition to companies with technologies, products, and services already implemented in foreign markets.

COST: The cost of a showcase 8.5 x 11 inch page for a large firm, defined as a U.S. firm with more than 500 employees, is $795 per single side page. The cost of a showcase 8.5 x 11 inch page for a small or medium-sized business, defined as a U.S. company with fewer than 500 employees, is $395 per single side page. Large and small U.S. firms can submit a minimum of one single sided page and maximum two single sided pages of content priced respectively at $795 and $395 per page. These fees will cover the expenses of designing, printing and distributing the Export Listing Guide.

SUBMISSION INSTRUCTIONS: All interested firms should (1) first register using this link: *https://emenuapps.ita.doc.gov/ePublic/newRegistration.jsp?SmartCode=6S4B;* (2) After registering, a representative from Global Markets will contact you with a Participation Agreement that will need to be signed and returned to us by email. The Participation Agreement can be emailed to *Rachael.Croft@trade.gov;* and *Vinay.Singh@trade.gov;* (3) Please submit your showcase page(s) by email to *Rachael.Croft@trade.gov;* and *Vinay.Singh@trade.gov;* (4) Lastly, a representative from Global Markets will contact you to complete payment over the phone.

U.S. companies must follow the instructions outlined below to format their submissions.

The address and deadline for submissions are as stated above in this notice. Showcase pages must be submitted by email to ensure timely receipt and acceptance. Payment must also be received by the May 25, 2016 5:00PM EDT for inclusion of your submission. The fee will be refunded to companies whose submissions are not selected for inclusion in the Guide.

Instructions:

Regarding format, please email submissions as a completed showcase 8.5 x 11 inch page in a Microsoft Word document. For images and/or graphics used, including logos please use a minimum resolution quality of 300 DPI (dots per inch). All images and logos used should be included in the Microsoft Word document, they should NOT be sent as a separate attachment. Please note that listings will contain only factual information. The following information must be included within the showcase page: (1) Name of U.S. company, Web site, and contact information; (2) Brief factual description of the company; and (3) Factual information on the U.S. products and services the U.S. company wishes to highlight for export to global 'Smart Cities'.

The final publication and order will be at the discretion of Global Markets, U.S. Department of Commerce. The Export Listing Guide and future Web site will note that its contents and links do not constitute an official endorsement or approval by the U.S. Department of Commerce or the U.S. Government of any of the companies, Web sites, products, and/or services listed.

Dated: April 20, 2016.

Arun Kumar,

Assistant Secretary of Commerce for Global Markets & Director General of the U.S. and Foreign Commercial Service.

[FR Doc. 2016–09883 Filed 4–27–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE582

Fisheries of the Exclusive Economic Zone Off Alaska; Stock Assessment of Alaska Sablefish; Peer Review Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: NMFS has requested the Center for Independent Experts (CIE) to conduct a peer review of the agency's stock assessment of Alaska Sablefish (*Anopoploma fimbria*). The CIE is a group affiliated with the University of Miami that provides independent peer reviews of NMFS science nationwide, including reviews of stock assessments for fish and marine mammals. The Alaska Sablefish stock assessment is reviewed annually by the Alaska Fisheries Science Center, the North Pacific Fishery Management Council (NPFMC) Plan Team, and the NPFMC Scientific and Statistical Committee. The CIE review will examine whether the assessment incorporates the best scientific information available for making management decisions and provides a reasonable approach to understanding the population dynamics and stock status of Alaska Sablefish. The public is invited to attend and observe the presentations and discussions between the CIE panel and the NMFS scientists who collected and processed the data, and designed the underlying model.

DATES: The public meeting will be held from May 10 through May 12, 2016, 9 a.m. to 5 p.m. Alaska Daylight Time.

ADDRESSES: The review will be held at the Ted Stevens Marine Research Institute, 17109 Pt. Lena Loop Rd, Juneau, AK 99801. Visitors will need to sign in at the front desk.

FOR FURTHER INFORMATION CONTACT: Dana Hanselman, 907–789–6626.

SUPPLEMENTARY INFORMATION: The CIE panel will consist of three peer reviewers who will assess materials related to the topic, participate in a review workshop with the NMFS scientists who developed the model and the analytical approach, and produce a report. This review will be highly technical in nature and will cover mathematical details of the analytical approach. More information about the CIE is available on its Web site at *www.ciereviews.org.*

Members of the public are invited to observe, and will be provided opportunities to contribute on May 10 and May 12, 2016. The final report will be available prior to the September NPFMC Plan Team meetings and will consist of individual reports from each panelist and a summary report. The results of the review will be presented during the September 2016 NPFMC Plan Team meeting, which will be announced at a later time in the **Federal Register**.

Special Accommodations

These workshops will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Pete Hagen, 907–789–6029, at least 10 working days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 22, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–09908 Filed 4–27–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Marine Recreational Information Program Fishing Effort Survey

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before June 27, 2016.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Rob Andrews, NOAA Fisheries, Office of Science and Technology, (301) 427–8105 or *rob.andrews@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Marine recreational anglers are surveyed to collect catch and effort data, fish biology data, and angler socioeconomic characteristics. These data are required to carry out provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), as amended, regarding conservation and management of fishery resources.

Marine recreational fishing catch and effort data are collected through a combination of mail surveys, telephone surveys and on-site intercept surveys with recreational anglers. Amendments to the Magnuson-Stevens Fishery Conservation and Management Act (MSA) require the development of an improved data collection program for recreational fisheries. To partially meet these requirements, NOAA Fisheries designed and implemented the MRIP Fishing Effort Survey (FES) to ensure better coverage and representation of recreational fishing activity.

The FES is a self-administered, household mail survey that samples from a residential address frame to collect data on the number of recreational anglers and the number of recreational fishing trips. The survey estimates marine recreational fishing activity for all coastal states from Maine through Texas.

FES estimates are combined with estimates derived from independent but complementary surveys of fishing trips, the Access-Point Angler Intercept Survey, to estimate total, state-level fishing catch, by species. These estimates are used in the development, implementation, and monitoring of fishery management programs by NOAA Fisheries, regional fishery management councils, interstate marine fisheries commissions, and state fishery agencies.

II. Method of Collection

Information will be collected through self-administered mail surveys.

III. Data

OMB Control Number: 0648–0652.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Individuals or households.

Estimated Number of Respondents: 110,000.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 18,333 hours.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 25, 2016.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2016–09948 Filed 4–27–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2016–OS–0049]

Proposed Collection; Comment Request

AGENCY: Office of the DoD Chief Information Officer, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the DoD Chief Information Officer, announces a renewal of proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received June 27, 2016.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please contact the DoD's DIB Cybersecurity Activities Office: (703) 604–3167, toll free (855) 363–4227, located at 1550 Crystal Dr., Suite 1000–A, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: DoD's Defense Industrial Base (DIB) Cybersecurity (CS) Activities Cyber Incident Reporting; OMB Control Number 0704–0489.

Needs and Uses: The information collection requirement is necessary to support mandatory cyber incident reporting requirements under 10 U.S.C. Section 393 (formerly Pub. L. 112–239, National Defense Authorization Act for Fiscal Year 2013, Section 941, Reports to Department of Defense on penetrations of networks and information systems of certain contractors) and 10 U.S.C. Section 391 (formerly Pub. L. 113–58, National Defense Authorization Act for Fiscal Year 2015, Section 1632, Reporting on Cyber Incidents with Respect to Networks and Information Systems of Operationally Critical Contractors).

Affected Public: Business or other for-profit and not for profit institutions.

Annual Burden Hours: 350,000.

Number of Respondents: 10,000.

Responses per Respondent: 5.

Annual Responses: 50,000.

Average Burden per Response: 7 hours.

Frequency: On occasion.

Respondents are DoD contractors who are required to report cyber incidents to the Department of Defense. The primary means of submitting a cyber incident report is through a secure unclassified web portal, but if a company is unable to access the secure web portal it may submit a cyber incident report through other means of communication (*e.g.,* fax, telephone, or United States Postal Service). DoD contractors report cyber incidents that affect DoD information, facilitating cyber situational awareness, cyber threat information sharing, and better protection of unclassified defense information.

Dated: April 25, 2016.

Aaron Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2016–09954 Filed 4–27–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; IRFlex Corporation

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to IRFlex Corporation, a revocable, nonassignable, exclusive license to practice in the field of use of nonlinear, mid-infrared fiber and fiber devices to generate and/or guide mid-infrared sources over long distances (1–500 meters) in the United States, the Government-owned invention described in U.S. Patent No. 8,710,470 entitled "Wavelength and Power Scalable Waveguiding-Based Infrared Laser System", Navy Case No. 101,907 and any continuations, divisionals or re-issues thereof.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than May 13, 2016.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue SW., Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Rita Manak, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue SW., Washington, DC 20375–5320, telephone 202–767–3083. Due to U.S. Postal delays, please fax 202–404–7920, email: *rita.manak@nrl.navy.mil* or use courier delivery to expedite response.

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: April 21, 2016.

C. Pan,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 2016–09956 Filed 4–27–16; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

[Certification Notice—239]

Notice of Filing of Self-Certification of Coal Capability Under the Powerplant and Industrial Fuel Use Act

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of filing.

SUMMARY: On April 15, 2016, Mattawoman Energy, LLC, as owner and operator of a new baseload electric generating powerplant, submitted a coal capability self-certification to the Department of Energy (DOE) pursuant to section 201(d) of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended, and DOE regulations in 10 CFR 501.60 and 501.61. FUA and regulations thereunder require DOE to publish a notice of filing of self-certification in the **Federal Register**. 42 U.S.C. 8311(d) and 10 CFR 501.61(c).

ADDRESSES: Copies of coal capability self-certification filings are available for public inspection, upon request, in the Office of Electricity Delivery and Energy Reliability, Mail Code OE–20, Room 8G–024, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Christopher Lawrence at (202) 586–5260.

SUPPLEMENTARY INFORMATION: Title II of FUA, as amended (42 U.S.C. 8301 *et seq.*), provides that no new base load electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. Pursuant to FUA in order to meet the requirement of coal capability, the owner or operator of such a facility proposing to use natural gas or petroleum as its primary energy source shall certify to the Secretary of Energy (Secretary) prior to construction, or prior to operation as a base load electric powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with FUA section 201(a) as of the date it is filed with the Secretary. 42 U.S.C. 8311.

The following owner of a proposed new baseload electric generating powerplant has filed a self-certification of coal-capability with DOE pursuant to FUA section 201(d) and in accordance with DOE regulations in 10 CFR 501.60 and 501.61:

OWNER: Mattawoman Energy, LLC,
CAPACITY: 990 megawatts (MW)
PLANT LOCATION: 14175 Brandywine Road, Brandywine, MD 20613
IN-SERVICE DATE: 10/31/2018

Issued in Washington, DC, on April 21, 2016.

Christopher Lawrence,

Electricity Policy Analyst, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2016–10013 Filed 4–27–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2622–012]

Turners Falls Hydro, LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, Approving use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent To File License Application and Request To Use the Traditional Licensing Process.

b. *Project No.:* 2622–012.

c. *Date Filed:* February 26, 2016.

d. *Submitted By:* Turners Falls Hydro, LLC (Turners Falls Hydro).

e. *Name of Project:* Turners Falls Hydro Project.

f. *Location:* On the Connecticut River in Franklin County, Massachusetts. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Peter Clarke, Turners Falls Hydro, LLC, P.O. Box 149, Hamilton, MA 01936; (978) 468–3999.

i. *FERC Contact:* Bill Connelly at (202) 502–8587; or email at *william.connelly@ferc.gov.*

j. Turners Falls Hydro filed its request to use the Traditional Licensing Process on February 26, 2016. Turners Falls Hydro provided public notice of its request on March 3 and March 10, 2016. In a letter dated April 22, 2016, the Director of the Division of Hydropower Licensing approved Turners Falls Hydro's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and NOAA Fisheries under section 7 of the

Endangered Species Act and the joint agency regulations there under at 50 CFR part 402 and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the Massachusetts State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. Turners Falls Hydro filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

m. A copy of the PAD is available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

n. The licensee states its unequivocal intent to submit an application for a new license for Project No. 2622. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by February 28, 2019.

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: April 22, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–09935 Filed 4–27–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14768–000]

Energy Resources USA Inc.; Notice Of Preliminary Permit Application Accepted For Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On March 11, 2016, the Energy Resources USA Inc. filed an application for a preliminary permit under section 4(f) of the Federal Power Act proposing to study the feasibility of the proposed Salamonie Lake Dam Hydroelectric Project No. 14768–000, to be located at the existing Salamonie Lake Dam on the Salamonie River, near the town of Wabash, in Wabash County, Indiana. The Salamonie Lake Dam is owned by the United States government and operated by the U.S. Army Corps of Engineers, Louisville District.

The proposed project would consist of: (1) A new 15-foot by 10-foot by 90-foot-long concrete conduit; (2) a new 98-foot by 45-foot reinforced concrete powerhouse containing two 2.5-megawatt (MW) vertical Kaplan turbine-generators having a total combined generating capacity of 5 MW; (3) a new 300-foot-long by 95-foot-wide tailrace; (4) a new 60-foot-long by 50-foot-wide substation with a 6-mega-volt-ampere 4.16/69-kilovolt three-phase step-up transformer; (5) a new 2-mile-long, 69-kilovolt transmission line; and (6) appurtenant facilities. The project would have an estimated annual generation of 13.76 gigawatt-hours.

Applicant Contact: Mr. Ander Gonzalez, 350 Lincoln Road, 2nd Floor, Miami, FL 33139; telephone (954) 248–8425.

FERC Contact: Sergiu Serban, (202) 502–6211.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14768–000.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14768) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: April 22, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–09937 Filed 4–27–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14767–000]

Energy Resources USA INC.;Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

April 22, 2016.

On March 11, 2016, the Energy Resources USA Inc. filed an application for a preliminary permit under section 4(f) of the Federal Power Act proposing to study the feasibility of the proposed Monroe Lake Dam Hydroelectric Project No. 14767–000, to be located at the existing Mississinewa Lake Dam on the Salt Creek River, near the town of Bloomington, in Monroe County, Indiana. The Monroe Lake Dam is owned by the United States government and operated by the U.S. Army Corps of Engineers, Louisville District.

The proposed project would consist of: (1) A new 15-foot by 10-foot by 90-foot-long concrete conduit; (2) a new 98-foot by 45-foot reinforced concrete powerhouse containing two 2-megawatt (MW) vertical Kaplan turbine-generators having a total combined generating capacity of 4 MW; (3) a new 300-foot-long by 95-foot-wide tailrace; (4) a new 60-foot-long by 50-foot-wide substation with a 5-mega-volt-ampere 4.16/69-kilovolt three-phase step-up transformer; (5) a new 3-mile-long, 69-kilovolt transmission line; and (6) appurtenant facilities. The project would have an estimated annual generation of 13.5 gigawatt-hours.

Applicant Contact: Mr. Ander Gonzalez, 350 Lincoln Road, 2nd Floor, Miami, FL 33139; telephone (954) 248–8425.

FERC Contact: Sergiu Serban, (202) 502–6211.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14767–000.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14767) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,
Secretary.

[FR Doc. 2016–09936 Filed 4–27–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0699; FRL—9945–42–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Primary Magnesium Refining (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), "NESHAP for Primary Magnesium Refining (40 CFR part 63, subpart TTTTT) (Renewal)" (EPA ICR No. 2098.07, OMB Control No. 2060–0536), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through April 30, 2016. Public comments were previously requested via the **Federal Register** (80 FR 32116) on June 5, 2015 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before May 31, 2016.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2012–0699, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change—including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov,* or in person, at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: Owners and operators of affected facilities are required to comply with reporting and record-keeping requirements for the general provisions of 40 CFR part 63, subpart A, as well as for the specific requirements at 40 CFR part 63, subpart TTTTT. This includes submitting initial notification reports, performance tests and periodic reports and results, and maintaining records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These reports are used by EPA to determine compliance with the standards.

Form Numbers: None.

Respondents/affected entities: Primary Magnesium Refining Facilities

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart TTTTT).

Estimated number of respondents: 1 (total).

Frequency of response: Initially, occasionally and semiannually.

Total estimated burden: 611 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $62,700 (per year), which includes $1,200 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is no change in burden hours in this ICR from the previous ICR because the regulations have not changed, and are not expected to change, in the next three years. There is, however, a small adjustment increase in the estimated labor costs as due to an update in labor rates.

Courtney Kerwin,
Acting-Director, Collection Strategies Division.

[FR Doc. 2016–09894 Filed 4–27–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[CERCLA–04–2016–3752; FRL–9945–87–Region 4]

Forshaw Chemicals Superfund Site; Charlotte, Mecklenburg County, North Carolina; Notice of Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of settlement.

SUMMARY: Under 122(h) of the Comprehensive Environmental

Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency (EPA) has entered into a settlement with James R. Forshaw and Wood Protection Products, Inc., concerning the Forshaw Chemicals Superfund Site located in Charlotte, Mecklenburg County, North Carolina. The settlement addresses recovery of CERCLA costs for a cleanup action performed by the EPA at the Site.

DATES: The Agency will consider public comments on the settlement until May 31, 2016. The Agency will consider all comments received and may modify or withdraw its consent to the proposed settlement if comments received disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from the Agency by contacting Ms. Paula V. Painter, Program Analyst, using the contact information provided in this notice. Comments may also be submitted by referencing the Site's name through one of the following methods:

Internet: https://www.epa.gov/nc/public-notice-settlement-concerning-forshaw-chemicals-superfund-site.

- *U.S. Mail:* U.S. Environmental Protection Agency, Superfund Division, Attn: Paula V. Painter, 61 Forsyth Street SW., Atlanta, Georgia 30303.
- *Email: Painter.Paula@epa.gov*

FOR FURTHER INFORMATION CONTACT: Paula V. Painter at 404–562–8887.

Dated: April 5, 2016.

Anita L. Davis,

Chief, Enforcement and Community Engagement Branch, Superfund Division.

[FR Doc. 2016–09998 Filed 4–27–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0703; FRL–9945–61–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Prepared Feeds Manufacturing (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), "NESHAP for Prepared Feeds Manufacturing (40 CFR part 63, subpart DDDDDDD) (Renewal)" (EPA ICR No. 2354.04, OMB Control No. 2060–0635), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through April 30, 2016. Public comments were previously requested via the **Federal Register** (80 FR 32116) on June 5, 2015 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before May 31, 2016.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2012–0703, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed either online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: Owners and operators of affected facilities are required to comply with reporting and record keeping requirements for the general provisions of 40 CFR part 63, subpart A, as well as for the specific requirements at 40 CFR part 63, subpart DDDDDDD. This includes submitting initial notification reports, performance tests and periodic reports and results, and maintaining records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These reports are used by EPA to determine compliance with the standards.

Form Numbers: None.

Respondents/affected entities: Prepared feeds manufacturing facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart DDDDDDD).

Estimated number of respondents: 1,800 (total).

Frequency of response: Initially and annually.

Total estimated burden: 64,100 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $6,490,000 (per year), which includes $37,200 in either annualized capital/startup or operation & maintenance costs.

Changes in the Estimates: There is an adjustment increase in the respondent labor hours and cost in this ICR compared to the previous ICR. This is not due to program changes. The increase occurred because this ICR assumes all existing respondents will take some time each year to re-familiarize with the regulatory requirements. Additionally, there is a small decrease of $36 in the estimated O&M cost due to rounding. This ICR rounds all calculated burden and costs to three significant digits. There is no change in the methodology or assumption used to calculate O&M cost.

Courtney Kerwin,

Acting-Director, Collection Strategies Division.

[FR Doc. 2016–09903 Filed 4–27–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R10–OAR–2015–0854: FRL–9945–88–Region 10]

Adequacy Determination for the Medford, Oregon Carbon Monoxide State Implementation Plan for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy determination.

SUMMARY: The Environmental Protection Agency (EPA) is notifying the public of its finding that the Medford, Oregon second 10-year limited maintenance plan (LMP) for carbon monoxide (CO) is adequate for transportation conformity purposes. The LMP was submitted to the EPA by the State of Oregon Department of Environmental Quality (ODEQ or the State) on December 11, 2015, and a supplement was submitted on December 30, 2015. As a result of our adequacy finding, regional emissions analyses will no longer be required as part of the transportation conformity determinations for CO for the Medford area.

DATES: This finding is effective May 13, 2016.

FOR FURTHER INFORMATION CONTACT: The finding will be available at the EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm*. You may also contact Dr. Karl Pepple, U.S. EPA, Region 10 (OAWT–107), 1200 Sixth Ave., Suite 900, Seattle WA 98101; (206) 553–1778; or by email at *pepple.karl@epa.gov*.

SUPPLEMENTARY INFORMATION: This action provides notice of the EPA's adequacy finding regarding the second 10-year CO limited maintenance plan (LMP) for the Medford area for purposes of transportation conformity. The EPA's finding was made pursuant to the adequacy review process for implementation plan submissions delineated at 40 CFR 93.118(f)(1) under which the EPA reviews the adequacy of a state implementation plan (SIP) submission prior to the EPA's final action on the implementation plan.

The State submitted the LMP to the EPA on December 11, 2015, and submitted a supplement to EPA on December 30, 2015. Pursuant to 40 CFR 93.118(f)(1), the EPA notified the public of its receipt of this plan and its review for an adequacy determination on the EPA's Web site and requested public comment by no later than February 22, 2016. The EPA received no comments on the plan during the comment period. As part of our analysis, we also reviewed the State's compilation of public comments and response to comments that were submitted during the State's public process for the LMP. There were no applicable adverse comments directed at the on-road portion of the LMP.

Based on our review, the EPA believes it is appropriate to find this LMP adequate for use in transportation conformity determinations prior to final action on the LMP. The EPA notified ODEQ in a letter dated March 1, 2016 (adequacy letter), subsequent to the close of the EPA comment period, that the EPA had found the LMP to be adequate for use in transportation conformity determinations. A copy of the adequacy letter and its enclosure are available in the docket for this action and at the EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.*

Pursuant to 40 CFR 93.109(e), limited maintenance plans are not required to contain on-road motor vehicle emissions budgets. Accordingly, as a result of this adequacy finding, regional emissions analyses will no longer be required as a part of the transportation conformity determinations for CO for the Medford area. However, other conformity requirements still remain such as consultation (40 CFR 93.112), transportation control measures (40 CFR 93.113), and project level analysis (40 CFR 93.116).

Transportation conformity is required by section 176(c) of the Clean Air Act. Transportation conformity to a SIP means that on-road transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards. The minimum criteria by which we determine whether a SIP is adequate for conformity purposes are specified at 40 CFR 93.118(e)(4). The EPA's analysis of how the LMP satisfies these criteria is found in the adequacy letter and its enclosure.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 19, 2016.

Dennis J. McLerran,

Regional Administrator, Region 10.

[FR Doc. 2016–09968 Filed 4–27–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0677; FRL–9945–26–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction or Modification Commenced After June 11, 1973 and Prior to May 19, 1978 (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), "NSPS for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction or Modification Commenced After June 11, 1973 and Prior to May 19, 1978 (40 CFR part 60, subpart K) (Renewal)" (EPA ICR No. 1797.07, OMB Control No. 2060–0442), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through April 30 2016. Public comments were requested previously via the **Federal Register** (80 FR 32116) on June 5, 2015 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before May 31, 2016.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2012–0677, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov*. Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov*.

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: Owners and operators of affected facilities are required to comply with reporting and record keeping requirements for the general provisions of 40 CFR part 60, subpart A, as well as for the specific requirements at 40 CFR part 60, subpart K. This includes submitting initial notifications and maintaining records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These reports are used by EPA to determine compliance with the standards.

Form Numbers: None.

Respondents/affected entities: Facilities with petroleum liquids storage vessels.

Respondent's obligation to respond: Mandatory (40 CFR part 60 Subpart K).

Estimated number of respondents: 69 (total).

Frequency of response: Initially and occasionally.

Total estimated burden: 321 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $32,200 (per year), which includes $0 for both annualized capital/startup and operation & maintenance costs.

Changes in the Estimates: There is a substantial decrease in burden from the previous ICR due to a decrease in the number of sources. Many storage vessels have been modified and become subject to Subpart Kb. Based on information obtained from the Agency's 2011 Petroleum Refinery ICR, the number of facilities subject to this regulation has decreased from 220 to 69. The update in source count results in a decrease in the labor hours, labor costs, and number of responses.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2016–09889 Filed 4–27–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0693; FRL–9945–36–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Taconite Iron Ore Processing (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), "NESHAP for Taconite Iron Ore Processing (40 CFR part 63, subpart RRRRR) (Renewal)" (EPA ICR No. 2050.06, OMB Control No. 2060–0538), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through April 30, 2016. Public comments were previously requested via the **Federal Register** (80 FR 32116) on June 5, 2015 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before May 31, 2016.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2012–0693, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2970; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: Owners and operators of affected facilities are required to comply with reporting and record keeping requirements for the general provisions of 40 CFR part 63, subpart A, as well as for the specific requirements at 40 CFR part 63, subpart RRRRR. This includes submitting initial notifications, performance tests and periodic reports and results, and maintaining records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These reports are used by EPA to determine compliance with the standards.

Form Numbers: None.

Respondents/affected entities: Taconite iron ore processing plants.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart RRRRR).

Estimated number of respondents: 4 (total).

Frequency of response: Initially and semiannually.

Total estimated burden: 276 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $326,000 (per year), which includes $298,000 in either annualized capital/startup or operation & maintenance costs.

Changes in the Estimates: There is an adjustment decrease in the respondent labor hours and the number of responses as currently identified in the OMB Inventory of Approved Burdens. The decrease is due to a decline in the number of respondents. The previous ICR estimated eight facilities; however, recent industry information indicates that only half of these facilities are now in operation.

There is, however, an adjustment increase in the respondent O&M costs. There is not an actual increase in cost;

rather, the increases occurred because this ICR accounts for contractor costs associated with Method 5 PM tests as an O&M cost, while the previous ICR accounted for this cost as a labor cost.

Courtney Kerwin,

Acting-Director, Collection Strategies Division.

[FR Doc. 2016–09893 Filed 4–27–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9945–90–ORD]

Office of Research and Development; Ambient Air Monitoring Reference and Equivalent Methods: Designation of Three New Reference Methods and Three New Equivalent Methods

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of the designation of three new reference methods and three new equivalent methods for monitoring ambient air quality.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has designated, in accordance with 40 CFR part 53, three new reference methods and three new equivalent methods. The reference methods include one for measuring concentrations of PM_{10}, one for measuring $PM_{10\text{-}2.5}$, and one for measuring ozone (O_3) in ambient air. The three equivalent methods are for measuring $PM_{2.5}$ concentrations in ambient air.

FOR FURTHER INFORMATION CONTACT: Robert Vanderpool, Exposure Methods and Measurement Division (MD–D205–03), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, North Carolina 27711. Email: *Vanderpool.Robert@epa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with regulations at 40 CFR part 53, the EPA evaluates various methods for monitoring the concentrations of those ambient air pollutants for which EPA has established National Ambient Air Quality Standards (NAAQSs) as set forth in 40 CFR part 50. Monitoring methods that are determined to meet specific requirements for adequacy are designated by the EPA as either reference or equivalent methods (as applicable), thereby permitting their use under 40 CFR part 58 by States and other agencies for determining compliance with the NAAQSs. A list of all reference or equivalent methods that have been previously designated by EPA may be found at *http://www.epa.gov/ttn/amtic/criteria.html.*

The EPA hereby announces the designation of one new reference method for measuring pollutant concentrations of PM_{10}, one new reference method for measuring pollutant concentrations of $PM_{10\text{-}2.5}$, one for measuring ozone (O_3), and three new equivalent methods for measuring pollutant concentrations of $PM_{2.5}$ in the ambient air. These designations are made under the provisions of 40 CFR part 53, as amended on October 26, 2015 (80 FR 65291–65468).

The new reference method for O_3 is an automated method that utilizes a measurement principle based on non-dispersive ultraviolet absorption photometry. The newly designated reference method for O_3 is identified as follows:

RFOA–0216–230, "Teledyne Advanced Pollution Instrumentation, Model 265E or T265 Chemiluminescence Ozone Analyzer," operated on any full scale range between 0–100 ppb and 0–1000 ppb, with any range mode (Single, Dual, or AutoRange), at any ambient temperature in the range of 5 °C to 40 °C, and with a TFE filter or a Kynar® DFU in the sample air inlet, operated with a sample flow rate of 500 ± 50 cm^3/min (sea level), with the dilution factor set to 1, with Temp/Press compensation ON, and in accordance with the appropriate associated instrument manual, and with or without any of the following options: Internal or external sample pump, Sample/Cal valve option, Rack mount with or without slides, analog input option, 4–20 mA isolated current loop output. Note 2 applies to the following Teledyne Advanced Pollution Instrumentation Models 265E and T265.

The application for a reference method determination for this candidate method was received by the Office of Research and Development on February 2, 2016. The analyzer is commercially available from the applicant, Teledyne Advanced Pollution Instrumentation, Inc., 9480 Carroll Park Drive, San Diego, CA 92121–2251.

The new reference method for PM_{10} is a manual monitoring method based on a particular PM_{10} sampler and is identified as follows:

RFPS–0216–231, "Met One Instruments, Inc. E–FRM," configured for filter sampling of ambient particulate matter using the US EPA PM_{10} inlet specified in 40 CFR part 50 appendix L, Figs. L–2 thru L–19, with a flow rate of 16.67 L/min, using 47 mm PTFE membrane filter media, and operating with firmware version R2.0.1 and later, and operated in accordance with the Met One E–FRM PM_{10} operating manual. This designation applies to PM_{10} measurements only.

The new $PM_{10\text{-}2.5}$ reference method utilizes a pair of filter samplers than have been designated individually as reference methods, one for $PM_{2.5}$ and the other one for PM_{10}, and have been shown to meet the requirements specified in appendix O of 40 CFR part 50. The $PM_{2.5}$ and PM_{10} samplers are designated as reference methods RFPS–0315–221 and RFPS–0216–231, respectively. The newly designated $PM_{10\text{-}2.5}$ sampler is identified as follows:

RFPS–0316–232, "Met One Instruments, Inc. E–FRM–PM_{10} and E–FRM–$PM_{2.5}$ Sampler Pair" for the determination of coarse particulate matter as $PM_{10\text{-}2.5}$, consisting of a pair of Met One Instruments, Inc. E–FRM samplers, with one being the E–FRM $PM_{2.5}$ sampler (RFPS–0315–221) and the other being the E–FRM PM_{10} sampler (RFPS–0216–231). The units are to be collocated to within 1–4 meters of one another and sample concurrently. Both units are operated in accordance with the associated E–FRM instruction manual. This designation applies to $PM_{10\text{-}2.5}$ measurements only.

One newly designated equivalent method for $PM_{2.5}$ is a manual monitoring method based on a particular $PM_{2.5}$ sampler and is identified as follows:

EQPS–0316–235, "Met One Instruments, Inc. E–FRM," configured for filter sampling of ambient particulate matter using the US EPA PM_{10} inlet specified in 40 CFR 50 Appendix L, Figs. L–2 thru L–19, equipped with a URG–2000–30EGN Cyclone particle size separator, and operated for a continuous 24-hour sample period at a flow rate of 16.67 liters/minute, using 47 mm PTFE membrane filter media, and operating with firmware version R1.1.0 and later, and operated in accordance with the Met One E–FRM $PM_{2.5}$ operating manual.

The application for reference method determination for the PM_{10} method was received by the Office of Research and Development on February 4, 2016, the $PM_{10\text{-}2.5}$ method application was received on March 21, 2016, and the equivalent $PM_{2.5}$ method was received on March 28, 2016. These monitors are commercially available from the applicant, Met One Instruments, Inc., 1600 Washington Blvd., Grants Pass, OR 97526.

Two newly designated equivalent methods for $PM_{2.5}$ are manual monitoring method based on particular $PM_{2.5}$ samplers and are identified as follows:

EQPS–0316–233, "URG–MASS100 Single $PM_{2.5}$ Sampler," operated with software (firmware) version 4B or 5.0.1, configured for "Single 2.5" operation with a URG–2000–30EGN Cyclone particle size separator, and operated for a continuous 24-hour sample period at a flow rate of 16.67 liters/minute, and in accordance with the URG–MASS100 Operator's Manual and with the requirements and sample collection filters specified in 40 CFR part 50, appendix L.

EQPS–0316–234, "URG–MASS300 Sequential $PM_{2.5}$ Sampler," operated with software (firmware) version 4B or 5.0.1, configured for "Multi 2.5" operation with a URG–2000–30EGN Cyclone particle size separator, and operated for a continuous 24-hour sample period at a flow rate of 16.67 liters/minute, and in accordance with the URG–MASS300 Operator's Manual and with the requirements and sample collection filters specified in 40 CFR part 50, appendix L.

These applications for equivalent method determinations for the $PM_{2.5}$ methods were received by the Office of Research and Development on March 21, 2016. These monitors are commercially available from the applicant, URG Corporation, 116 S. Merritt Mill Rd., Chapel Hill, NC 27516.

Representative test monitors have been tested in accordance with the applicable test procedures specified in 40 CFR part 53, as amended on October 26, 2015. After reviewing the results of those tests and other information submitted by the applicant, EPA has determined, in accordance with part 53, that these methods should be designated as a reference or equivalent methods.

As designated reference and equivalent methods, these methods are acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the methods must be used in strict accordance with the operation or instruction manual associated with the method and subject to any specifications and limitations (*e.g.*, configuration or operational settings) specified in the designated method description (see the identification of the method above).

Use of the methods also should be in general accordance with the guidance and recommendations of applicable sections of the "Quality Assurance Handbook for Air Pollution Measurement Systems, Volume I," EPA/600/R–94/038a and "Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II, Ambient Air Quality Monitoring Program," EPA–454/B–13–003, (both available at *http://www.epa.gov/ttn/amtic/qalist.html*). Provisions concerning modification of such methods by users are specified under Section 2.8 (Modifications of Methods by Users) of appendix C to 40 CFR part 58.

Consistent or repeated noncompliance with any of these conditions should be reported to: Director, Exposure Methods and Measurements Division (MD–E205–01), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of these reference and equivalent methods are intended to assist the States in establishing and operating their air quality surveillance systems under 40 CFR part 58. Questions concerning the commercial availability or technical aspects of the method should be directed to the applicant.

Dated: April 19, 2016.

Jennifer Orme-Zavaleta,

Director, National Exposure Research Laboratory.

[FR Doc. 2016–10006 Filed 4–27–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2016–0182, FRL–9945–86–OLEM]

Agency Information Collection Activities; Proposed Collection; Comment Request; 2017 Hazardous Waste Report, Notification of Regulated Waste Activity, and Part A Hazardous Waste Permit Application and Modification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit the information collection request (ICR), 2017 Hazardous Waste Report, Notification of Regulated Waste Activity, and Part A Hazardous Waste Permit Application and Modification. (EPA ICR No. 0976.18, OMB Control No. 2050–0024 to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*). Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through January 31, 2017. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before June 27, 2016.

ADDRESSES: Submit your comments, referencing by Docket ID No. EPA–HQ–OLEM–2016–0024, online using *www.regulations.gov* (our preferred method), by email to *rcra-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Peggy Vyas, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 703–308–5477; fax number: 703–308–8433; email address: *vyas.peggy@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, the EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: Section 3002 of RCRA requires hazardous waste generators to report, at least every 2 years, the quantity and nature of hazardous waste generated and managed during that reporting cycle. Section 3004 requires treatment, storage, and disposal facilities (TSDFs) to report any waste received. This is mandatory reporting. The information is collected via the Hazardous Waste Report (EPA Form 8700–13 A/B). This form is also known as the "Biennial Report" form.

Section 3010 of RCRA requires any person who generates or transports regulated waste or who owns or operates a facility for the treatment, storage, or disposal of regulated waste to notify the EPA of their activities, including the location and general description of activities and the regulated wastes handled. The entity is then issued an EPA Identification number. Entities use the Notification Form (EPA Form 8700–12) to notify EPA of their hazardous waste activities. This form is also known as the "Notification" form. On January 13, 2015, EPA published the Definition of Solid Waste (DSW) final rule (80 FR 1694), which revised the regulations related to certain exclusions from solid and hazardous waste regulation. Changes have been made to the Notification form to reflect this final rule.

Section 3005 of RCRA requires TSDFs to obtain a permit. To obtain the permit, the TSDF must submit an application describing the facility's operation. The RCRA Hazardous Waste Part A Permit Application form (EPA Form 8700–23) defines the processes to be used for treatment, storage, and disposal of hazardous wastes; the design capacity of such processes; and the specific hazardous wastes to be handled at the facility. This form is also known as the "Part A" form.

Redline-strikeout versions of all three forms are available in the docket for this notice.

Form numbers: 8700–12, 8700–13A/B, and 8700–23.

Respondents/affected entities: Business or other for-profit as well as State, Local, or Tribal governments.

Respondent's obligation to respond: Mandatory (RCRA Sections 3002, 3304, 3005, 3010).

Estimated number of respondents: 50,692.

Frequency of response: Biennially.

Total estimated burden: 619,489 hours per year. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $25,530,368 (per year), includes $285,088 annualized capital or operation & maintenance costs.

Changes in estimates: The burden hours are likely to stay substantially the same.

Dated: April 19, 2016.

Barnes Johnson,

Director, Office of Resource Conservation and Recovery.

[FR Doc. 2016–10007 Filed 4–27–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0642; FRL–9945–74–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Chemical Preparations Industry (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), "NESHAP for Chemical Preparations Industry (40 CFR part 63, subpart BBBBBBB) (Renewal)" (EPA ICR No. 2356.04, OMB Control No. 2060–0636), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through April 30, 2016. Public comments were requested previously, via the **Federal Register** (80 FR 32116), on June 5, 2015—during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before May 31, 2016.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2012–0642, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions, to the Provisions are specified at 40 CFR part 63, subpart BBBBBBB. Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports are required semiannually at a minimum.

Form Numbers: None.

Respondents/affected entities: Chemical preparation facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart BBBBBBB).

Estimated number of respondents: 26 (total).

Frequency of response: Initially and semiannually.

Total estimated burden: 2,210 hours (per year). "Burden" is defined at 5 CFR 1320.3(b).

Total estimated cost: $223,000 (per year), which includes $390 in either annualized capital/startup or operation & maintenance costs.

Changes in the Estimates: There is an adjustment increase in respondent labor hours in this ICR from the most recently approved ICR. This is due to assuming all existing sources will have to re-familiarize themselves with the regulatory requirements each year.

Courtney Kerwin,

Acting-Director, Collection Strategies Division.

[FR Doc. 2016–09904 Filed 4–27–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HA–OAR–2003–0039; FRL—9945–85–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Reporting and Recordkeeping Requirements of the HCFC Allowance System (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), "Reporting and Recordkeeping Requirements of the HCFC Allowance System" (EPA ICR No. 2014.06, OMB Control No. 2060–0498) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through April 30, 2016. Public comments were previously requested via the **Federal Register** (80 FR 76474) on December 9, 2015 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before May 31, 2016.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2003–039 to (1) EPA online using *www.regulations.gov* (our preferred method), {by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Robert Burchard, Stratospheric Protection Division, Office of Atmospheric Programs (6205T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 343–9126; fax number: (202) 343–2338; email address: *burchard.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The international treaty *The Montreal Protocol on Substances that Deplete the Ozone Layer* (Protocol) and Title VI of the Clean Air Act Amendments (CAAA) established limits on total U.S. production, import, and export of class I and class II controlled ozone depleting substances (referred to hereinafter as "controlled substances"). Under its Protocol commitments, the United States was obligated to cease production and import of class I controlled substances (*e.g.,* chlorofluorocarbons or CFCs) with exemptions for essential uses, critical uses, previously-used material, and material that is transformed, destroyed, or exported to developing countries. The Protocol also establishes limits and reduction schedules leading to the eventual phaseout of class II controlled substances (*i.e.,* hydrochlorofluorocarbons or HCFCs).

The U.S. is obligated to limit HCFC consumption (defined by the Protocol as production plus imports, minus exports). The schedule called for a 35 percent reduction on January 1, 2004, followed by a 75 percent reduction on January 1, 2010, a 90 percent reduction on January 1, 2015, a 99.5 percent reduction on January 1, 2020, and a total phaseout on January 1, 2030. EPA is responsible for administering the phaseout. To ensure U.S. compliance with these limits and restrictions, EPA established an allowance system to control U.S. production and import of HCFCs by granting control measures referred to as baseline and calendar-year allowances. Baseline allowances are based on the historical activity of individual companies. Calendar-year allowances allow holders to produce and/or import controlled substances in a given year and are allocated as a percentage of baseline.

There are two types of baseline and calendar-year allowances: consumption and production allowances. Since each allowance is equal to 1 kilogram of HCFC, EPA is able to monitor the quantity of HCFCs being produced, imported and exported. Transfers of production and consumption allowances among producers and importers are allowed and are tracked by EPA. The above-described limits and restrictions are monitored by EPA through the recordkeeping and reporting requirements established in the regulations in *40 CFR part 82,* subpart A. To submit required information, regulated entities can download reporting forms from EPA's Web site (*http://www.epa.gov/ozone/record*), complete them, and send them to EPA electronically, via mail, courier, or fax. Upon receipt of the reports, the data is entered into the ODS Tracking System. The ODS Tracking System is a secure database that maintains the data submitted to EPA and helps the agency: (1) Maintain oversight over total production and consumption of controlled substances; (2) monitor compliance with limits and restrictions on production, imports, and trades and specific exemptions from the phaseout for individual U.S. companies; and (3) assess, and report on, compliance with U.S. obligations under the Montreal Protocol. EPA has implemented an electronic reporting system that allows regulated entities to prepare and submit data electronically. Coupled with the widespread use of the standardized forms, electronic reporting has improved data quality and made the reporting process efficient for both reporting companies and EPA. Most reporting is done electronically.

Pursuant to regulations in *40 CFR part 2,* subpart B, reporting businesses are entitled to assert a business confidentiality claim covering any part of the submitted business information as defined in *40 CFR 2.201*(c). EPA's practice is to manage the reported information as confidential business information.

Respondents/affected entities: Companies that produce, import, and export class II controlled ozone depleting substances.

Respondent's obligation to respond: Mandatory (Title VI of the Clean Air Act Amendments).

Estimated number of respondents: 40.

Frequency of response: Annually, quarterly, or as needed.

Total estimated burden: 1,434 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $153,264 (per year), includes $1,155 annualized capital or O&M costs.

Changes in estimates: The respondent numbers changed because the reporting community continues to change as ODS are phased out in the US. Specifically, we estimate fewer companies reporting on imports and exports of Class II ODS. We also assume fewer companies reporting on the destruction and transformation of this material.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2016–09890 Filed 4–27–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2016–0205; FRL–9945–49]

Pesticide Product Registration; Receipt of Application for New Active Ingredient

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received an application to register a pesticide product containing an active ingredient not included in any currently registered pesticide products. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on this application.

DATES: Comments must be received on or before May 31, 2016.

ADDRESSES: Submit your comments, identified by Docket Identification (ID) Number EPA–HQ–OPP–2016–0205, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Robert McNally, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *BPPDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, EPA seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

II. Registration Application

EPA has received an application to register a pesticide product containing an active ingredient not included in any currently registered pesticide products. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on this application. Notice of receipt of this application does not imply a decision by EPA on this application. For actions being evaluated under EPA's public participation process for registration actions, there will be an additional opportunity for public comment on the proposed decisions. Please see EPA's public participation Web site for additional information on this process *https://www.epa.gov/pesticide-registration/public-participation-process-registration-actions.* EPA received the following application to register a pesticide product containing an active ingredient not included in any currently registered pesticide products:

File Symbol: 89668–U. *Applicant:* MosquitoMate, Inc., 2520 Regency Rd., Lexington, KY 40503. *Product Name:* ZAP Males. *Active Ingredient:* Microbial pesticide—*Wolbachia pipientis,* ZAP Strain at 100.0%. *Proposed Use:* For use in non-biting, male *Aedes albopictus* (Asian tiger mosquito) to be released to mate with indigenous/wild female Asian tiger mosquitoes in order to control this specific species of mosquito through population suppression by prevention of egg hatch.

Authority: 7 U.S.C. 136 *et seq.*

Dated: April 21, 2016.

Mark A. Hartman,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 2016–09966 Filed 4–27–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0702; FRL–9945–55–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Area Sources: Primary Copper Smelting, Secondary Copper Smelting, and Primary Nonferrous Metals-Zinc, Cadmium, and Beryllium (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), "NESHAP for Area Sources: Primary Copper Smelting, Secondary Copper Smelting, and Primary Nonferrous Metals-Zinc, Cadmium, and Beryllium (Renewal)" (EPA ICR No. 2240.05, OMB Control No. 2060–0596), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through April 30, 2016. Public comments were previously requested via the **Federal Register** (80 FR 32116) on June 5, 2015 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before May 31, 2016.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2012–0702, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2970; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed either online at *www.regulations.gov,* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: Owners and operators of affected facilities are required to comply with reporting and record keeping requirements for the general provisions of 40 CFR part 63, subpart A, as well as the specific requirements at 40 CFR part 63, subparts EEEEEE, FFFFFF, and GGGGGG. This includes submitting initial notification reports, performance tests and periodic reports and results, and maintaining records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These reports are used by EPA to determine compliance with these standards.

Form Numbers: None.

Respondents/affected entities: Primary copper smelters, secondary copper smelters, and primary zinc or beryllium production facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subparts EEEEEE, FFFFFF and GGGGGG).

Estimated number of respondents: 5 (total).

Frequency of response: Initially.

Total estimated burden: 74 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $7,400 (per year), which includes $0 for both annualized capital/startup and operation & maintenance costs.

Changes in the estimates: There is a small adjustment increase in respondent burden hours and cost as currently identified in the OMB Inventory of Approved Burdens. The increase is due to a change in assumption. In this ICR, we assume all existing sources will take some time each year to re-familiarize themselves with the regulatory requirements.

Courtney Kerwin,

Acting-Director, Collection Strategies Division.

[FR Doc. 2016–09895 Filed 4–27–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting, Thursday, April 28, 2016

April 21, 2016.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, April 28, 2016, which is scheduled to commence at 10:30 a.m. in Room TW–C305, at 445 12th Street SW., Washington, DC.

Item No.	Bureau	Subject
1	CONSUMER & GOVERNMENTAL AFFAIRS.	TITLE: Transition from TTY to Real-Time Text Technology (GN Docket No. 15–178). SUMMARY: The Commission will consider a Notice of Proposed Rulemaking that seeks comment on proposals to support real-time text communications over Internet Protocol communications networks, to improve the accessibility of these networks for consumers who are deaf, hard of hearing, deaf-blind, and speech disabled.

Item No.	Bureau	Subject
2	WIRELINE COMPETITION	TITLE: Business Data Services in an Internet Protocol Environment; Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans (WC Docket No. 15–247); Special Access for Price Cap Local Exchange Carriers (WC Docket No. 05–25); and AT&T Corporation Petition for Rulemaking to Reform Regulations of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services (RM–10593). SUMMARY: The Commission will consider a Tariff Investigation Order and a Further Notice of Proposed Rulemaking proposing a new regulatory framework for the provision of business data services.
3	WIRELESS TELECOMMUNICATIONS AND OFFICE OF ENGINEERING & TECHNOLOGY.	TITLE: Amendment of the Commission's Rules with Regard to Commercial Operations in the 3550–3650 MHz Band (GN Docket No. 12–354). SUMMARY: The Commission will consider an Order on Reconsideration and a Second Report and Order that will finalize rules for the innovative spectrum sharing regime it created for making 150 megahertz available in the 3.5 GHz band.

* * * * * * *

Consent Agenda

The Commission will consider the following subjects listed below as a consent agenda and these items will not be presented individually:

1	MEDIA	TITLE: Wilfredo G. Blanco-Pi, Application for a New AM Booster Station at Guayama, Puerto Rico. SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning an Application for Review filed by Wilfredo G. Blanco-Pi seeking review of a Media Bureau letter decision.
2	MEDIA	TITLE: Edward A. Schober, Application for Construction Permit for New FM Translator Station W250BA, at Manahawkin, New Jersey. SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning an Application for Review filed by Edward A. Schober seeking review of an Audio Division, Media Bureau decision.
3	MEDIA	TITLE: Powell Meredith Communications Company, Application for a New AM Broadcast Station at Paradise, Nevada. SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning an Application for Review filed by Powell Meredith Communications Company seeking review of a Media Bureau letter decision.
4	MEDIA	TITLE: WKMJ Radio Live The People Station, Inc., Application for a Construction Permit for a new LPFM Station at Pinellas Park, Florida. SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning a Petition for Reconsideration filed by WKMJ Radio Live the People Station, Inc., seeking review of the Commission's Memorandum Opinion and Order.
5	MEDIA	TITLE: US Pro Descubierta, Application for a New LPFM Station at Seffner, Florida. SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning an Application for Review filed by U.S. Pro Descubierta seeking review of a Media Bureau letter decision.
6	ENFORCEMENT	TITLE: Enforcement Bureau Action. SUMMARY: The Commission will consider whether to take an enforcement action.
7	ENFORCEMENT	TITLE: Enforcement Bureau Action. SUMMARY: The Commission will consider whether to take an enforcement action.
8	ENFORCEMENT	TITLE: Enforcement Bureau Action. SUMMARY: The Commission will consider whether to take an enforcement action.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Additional information concerning this meeting may be obtained from the Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC Live Web page at *www.fcc.gov/live.*

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services, call (703) 993–3100 or go to *www.capitolconnection.gmu.edu.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2016–09929 Filed 4–27–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors met in open session at 10:05 a.m. on Tuesday, April 26, 2016, to consider the following matters:

SUMMARY AGENDA:

Disposition of minutes of previous Board of Directors' Meetings.

Memorandum and resolution re: Notice of Final Rulemaking: Revisions to Part 341 of the FDIC's Rules and Regulations Requiring the Registration of Securities Transfer Agents.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

DISCUSSION AGENDA:

Memorandum and resolution re: Notice of Proposed Rulemaking: Incentive-based Compensation Arrangements.

Memorandum and resolution re: Deposit Insurance Assessments for Small Banks.

In calling the meeting, the Board determined, on motion of Vice Chairman Thomas M. Hoenig, seconded by Director Thomas J. Curry (Comptroller of the Currency), concurred in by Director Richard Cordray (Director, Consumer Financial Protection Bureau), and Chairman Martin J. Gruenberg, that Corporation business required its consideration of the matters on less than seven days' notice to the public; and that no earlier notice of the meeting than that previously provided on April 20, 2016, was practicable.

By the same majority vote, the Board also determined that Corporation business required the addition to the agenda for consideration at the meeting on less than seven days' notice to the public, of the following matter and that no notice earlier than April 22, 2016, of the change in subject matter of the meeting was practicable:

Memorandum and resolution re: Notice of Proposed Rulemaking to Implement Liquidity Risk Standards for Certain FDIC Supervised Institutions.

The meeting was held in the Board Room located on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC.

Dated: April 26, 2016.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–10089 Filed 4–26–16; 4:15 pm]

BILLING CODE P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:05 a.m. on Tuesday, April 26, 2016, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's supervision, corporate, and resolution activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Thomas M. Hoenig, seconded by Director Richard Cordray (Director, Consumer Financial Protection Bureau), concurred in by Director Thomas J. Curry (Comptroller of the Currency), and Chairman Martin J. Gruenberg, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10).

Dated: April 26, 2016.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–10088 Filed 4–26–16; 4:15 pm]

BILLING CODE 6714–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Notice

April 25, 2016.

TIME AND DATE: 10:00 a.m., Wednesday, May 4, 2016.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (enter from F Street entrance).

STATUS: Closed.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in closed session: *Secretary of Labor* v. *Newtown Energy, Inc.*, Docket No. WEVA 2011–283 (Issues include whether the Administrative Law Judge erred by concluding that the violation in question was not significant and substantial and was not the result of an unwarrantable failure to comply.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Sarah Stewart,

Deputy General Counsel.

[FR Doc. 2016–09996 Filed 4–26–16; 11:15 am]

BILLING CODE 6735–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 23, 2016.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *BOK Financial Corporation,* Tulsa, Oklahoma; to acquire 100 percent of the voting shares of MBT Bancshares, Inc., and thereby indirectly acquire voting shares of Missouri Bank and Trust Company, both in Kansas City, Missouri.

Board of Governors of the Federal Reserve System, April 25, 2016.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2016–09942 Filed 4–27–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 2:00 p.m. on Tuesday, May 3, 2016.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th Street entrance between Constitution Avenue and C Streets NW., Washington, DC 20551.

STATUS: Open.

On the day of the meeting, you will be able to view the meeting via webcast from a link available on the Board's public Web site. *You do not need to register to view the webcast of the meeting.* A link to the meeting documentation will also be available approximately 20 minutes before the start of the meeting. Both links may be accessed from the Board's public Web site at *www.federalreserve.gov.*

If you plan to attend the open meeting in person, we ask that you notify us in advance and provide your name, date of birth, and social security number (SSN) or passport number. You may provide this information by calling 202–452–2474 or you may *register online.* You may pre-register until close of business on Monday, May 2, 2016. You also will be asked to provide identifying information, including a photo ID, before being admitted to the Board meeting. The Public Affairs Office must approve the use of cameras; please call 202–452–2955 for further information. If you need an accommodation for a disability, please contact Penelope Beattie on 202–452–3982. For the hearing impaired only, please use the Telecommunication Device for the Deaf (TDD) on 202–263–4869.

Privacy Act Notice: The information you provide will be used to assist us in prescreening you to ensure the security of the Board's premises and personnel. In order to do this, we may disclose your information consistent with the routine uses listed in the Privacy Act Notice for BGFRS–32, including to appropriate federal, state, local, or foreign agencies where disclosure is reasonably necessary to determine whether you pose a security risk or where the security or confidentiality of your information has been compromised. We are authorized to collect your information by 12 U.S.C. 243 and 248, and Executive Order 9397. In accordance with Executive Order 9397, we collect your SSN so that we can keep accurate records, because other people may have the same name and birth date. In addition, we use your SSN when we make requests for information about you from law enforcement and other regulatory agency databases. Furnishing the information requested is voluntary; however, your failure to provide any of the information requested may result in disapproval of your request for access to the Board's premises. You may be subject to a fine or imprisonment under 18 U.S.C. 1001 for any false statements you make in your request to enter the Board's premises.

MATTERS TO BE CONSIDERED:

DISCUSSION AGENDA:

1. Notice of Proposed Rulemaking on the Net Stable Funding Ratio.
2. Notice of Proposed Rulemaking on Restrictions on Qualified Financial Contracts of Systemically Important U.S. Banking Organizations and the U.S. Operations of Systemically Important Foreign Banking Organizations.

Notes: 1. The staff memo to the Board will be made available to attendees on the day of the meeting in paper and the background material will be made available on a compact disc (CD). If you require a paper copy of the entire document, please call Penelope Beattie on 202–452–3982. The documentation will not be available until about 20 minutes before the start of the meeting.

2. This meeting will be recorded for the benefit of those unable to attend. The webcast recording and a transcript of the meeting will be available after the meeting on the Board's public Web site *http://www.federalreserve.gov/aboutthefed/boardmeetings/* or if you prefer, a CD recording of the meeting will be available for listening in the Board's Freedom of Information Office, and copies can be ordered for $4 per disc by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

For More Information Please Contact: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may access the Board's public Web site at *www.federalreserve.gov* for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: April 26, 2016.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2016–10026 Filed 4–26–16; 11:15 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

The comment period for this application has been extended. Comments regarding this application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 16, 2016.

A. Federal Reserve Bank of Cleveland (Allen M. Brown, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. *Huntington Bancshares Incorporated,* Columbus, Ohio; to acquire FirstMerit Corporation, and thereby acquire control of its subsidiary bank, FirstMerit Bank, N.A., both in Akron, Ohio.

Board of Governors of the Federal Reserve System, April 22, 2016.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2016–09920 Filed 4–27–16; 8:45 am]

BILLING CODE P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–00XX; Docket No. 2015–0001; Sequence No. 26]

Submission for OMB Review; Simplifying Federal Award Reporting

AGENCY: Federal Acquisition Service; General Services Administration (GSA).

ACTION: Notice of request for comments regarding a new request for an OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement regarding OMB Control No: 3090–00XX; Simplifying Federal Award Reporting. A 60-day notice was published in the **Federal Register** at 80 FR 73187 on November 24, 2015. One comment was received.

DATES: Submit comments on or before: May 31, 2016.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally submit a copy to GSA by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for "Information Collection 3090–00xx; Simplifying Federal Award Reporting". Select the link "Submit a Comment" that corresponds with "Information Collection 3090–00XX; Simplifying Federal Award Reporting". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 3090–00xx; Simplifying Federal Award Reporting" on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 3090–00XX, Simplifying Federal Award Reporting.

Instructions: Please submit comments only and cite Information Collection 3090–00XX; Simplifying Federal Award Reporting, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Goldman, GSA, at telephone 202–779–2265.

SUPPLEMENTARY INFORMATION:

A. Purpose

The President's Management Agenda includes objectives for creating a twenty-first century government that delivers better results to the American people in a more efficient manner. Leveraging information technology capabilities to reduce reporting burden is key to achieving these goals. Section 5 of the Digital Accountability and Transparency Act (Pub. L. 113–101) requires a pilot program to develop recommendations for standardizing reporting, eliminating unnecessary duplication, and reducing compliance costs for recipients of Federal awards.

The pilot participants are required to provide requested reports as well as the cost to collect the data via the pilot. The proposed pilot program will provide an alternative submission method for existing Federal Acquisition Regulation (FAR) requirements, and assess the pilot results against the existing FAR-required method.

B. Discussion and Analysis

Comment: "The best way to simplify these numerous, massive, expensive awards is to shut them all down. They are all fake and mean nothing so who will miss them. Certainly we all know they are fake. They are voted on not because the awarded has done anything noteworthy. They are simply awards for being alive. They all need to be cut. The budget for giving awards should be zero, totally zero."

Response: Thank you for reviewing the **Federal Register** Notice. The comment addresses awards that are part of a voting process which appears to be associated with individual personnel awards. However, the **Federal Register** Notice focuses on streamlining reporting burden for Federal contract awards. If the comment is intended to address Federal contract awards, the commenter is encouraged to visit the Chief Acquisition Officers Council (CAOC) National Dialogue: Improving Federal Procurement and Grants Processes to engage in a more robust discussion (link: *https://cxo.dialogue2.cao.gov/*).

C. Annual Reporting Burden

Respondents: 720.

Responses per Respondent: 3 each week.

Total Annual Responses: 2160.

Hours per Response: .5.

Total Burden Hours: 56,160.

Public comments are particularly invited on: Whether this collection of information will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 3090–XXXX, Simplifying Federal Award Reporting, in all correspondence.

Dated: April 21, 2016.

David A. Shive,

Chief Information Officer.

[FR Doc. 2016–09912 Filed 4–27–16; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10527]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by June 27, 2016.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs,

Division of Regulations Development, Attention: Document Identifier/OMB Control Number ________, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of the following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10527 Annual Eligibility Redetermination, Product Discontinuation and Renewal Notices

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

1. *Type of Information Collection Request:* Revision a currently approved collection; *Title of Information Collection:* Annual Eligibility Redetermination, Product Discontinuation and Renewal Notices; *Use:* Section 1411(f)(1)(B) of the Affordable Care Act directs the Secretary of Health and Human Services (the Secretary) to establish procedures to redetermine the eligibility of individuals on a periodic basis in appropriate circumstances. Section 1321(a) of the Affordable Care Act provides authority for the Secretary to establish standards and regulations to implement the statutory requirements related to Exchanges, QHPs and other components of title I of the Affordable Care Act. Under section 2703 of the PHS Act, as added by the Affordable Care Act, and sections 2712 and 2741 of the PHS Act, enacted by the Health Insurance Portability and Accountability Act of 1996, health insurance issuers in the group and individual markets must guarantee the renewability of coverage unless an exception applies.

The final rule "Patient Protection and Affordable Care Act; Annual Eligibility Redeterminations for Exchange Participation and Insurance Affordability Programs; Health Insurance Issuer Standards Under the Affordable Care Act, Including Standards Related to Exchanges" (79 FR 52994), provides that an Exchange may choose to conduct the annual redetermination process for a plan year (1) in accordance with the existing procedures described in 45 CFR 155.335; (2) in accordance with procedures described in guidance issued by the Secretary for the coverage year; or (3) using an alternative proposed by the Exchange and approved by the Secretary. The guidance document "Guidance on Annual Redeterminations for Coverage for 2015" contains the procedures that the Secretary has specified, as noted in (2) above, until the issuance of further guidance. These procedures will be adopted by the Federally-facilitated Exchange. Under this option, the Exchange will provide three notices. These notices may be combined.

The final rule also amends the requirements for product renewal and re-enrollment (or non-renewal) notices to be sent by Qualified Health Plan (QHP) issuers in the Exchanges and specifies content for these notices. The guidance document "Draft Updated Federal Standard Renewal and Product Discontinuation Notices" provides draft updated Federal standard notices for product discontinuation and renewal that would be sent by issuers of individual market QHPs and issuers in the individual market. Issuers in the small group market may use the draft Federal standard small group notices released in the June 26, 2014 bulletin "Draft Standard Notices When Discontinuing or Renewing a Product in the Small Group or Individual Market", or any forms of the notice otherwise permitted by applicable laws and regulations. States that are enforcing the Affordable Care Act may develop their own standard notices, for product discontinuances, renewals, or both, provided the State-developed notices are at least as protective as the Federal standard notices. *Form Number:* CMS–10527 (OMB Control Number: 0938–1254); *Frequency:* Annually; *Affected Public:* Private Sector, State Governments; *Number of Respondents:* 2,945; *Number of Responses:* 12,224; *Total Annual Hours:* 149,186. (For policy questions regarding this collection, contact Russell Tipps at 301–492–4371.)

Dated: April 25, 2016.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2016–09953 Filed 4–27–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA: 93.592]

Announcing the Intent To Award a Single-Source Expansion Supplement Grant to the National Domestic Violence Hotline

AGENCY: Family and Youth Services Bureau, ACYF, ACF, HHS.

ACTION: This notice announces the intent to award a single-source expansion supplement grant under the Family Violence Prevention and Services Act (FVPSA) national domestic violence hotline grant program to the National Domestic Violence Hotline (Hotline) in Austin, TX.

SUMMARY: The Administration for Children and Families (ACF), Administration on Children, Youth and Families (ACYF), Family and Youth Services Bureau (FYSB), Division of Family Violence and Prevention Services (DFVPS) announces its intent to award a cooperative agreement of up to $3,750,000 as a single-source expansion supplement to the National Domestic Violence Hotline (Hotline) in Austin, TX.

DATES: The period of support for the single-source expansion supplement is September 30, 2016 through September 29, 2017.

FOR FURTHER INFORMATION CONTACT: Angela Yannelli, Senior Program Specialist, Family Violence Prevention and Services Program, 330 C Street SW., 3rd Floor, Suite 3621B, Washington, DC 20201. Telephone: 202–401–5524; Email: *Angela.Yannelli@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Hotline in Austin, TX, is funded under the Family Violence Protection and Services Act (FVPSA) program to operate the 24-hour, national, toll-free telephone hotline that provides information and assistance to adult and youth victims of family violence, domestic violence, or dating violence, and to the family and household members of such victims, and to persons affected by the victimization. The supplemental award will expand the capacity of the Hotline's current efforts by focusing on the development of a tribal hotline and by providing additional phone advocates to ensure that the Hotline can answer all contacts. The award will also assist in developing the "Love Is Respect" Web site (*http://www.loveisrespect.org*) into a complete resource for teens and youth seeking to prevent and end abusive relationships.

Statutory Authority: The statutory authority for the award is section 313 of the Family Violence Prevention and Services Act (42 U.S.C. 10413) as amended by section 201 of the CAPTA Reauthorization Act of 2010 (Pub. L. 111–320).

Christopher Beach,

Senior Grants Policy Specialist, Division of Grants Policy, Office of Administration, Administration for Children and Families.

[FR Doc. 2016–09925 Filed 4–27–16; 8:45 am]

BILLING CODE 4184–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–1842]

Compliance Policy Guide on Crabmeat—Fresh and Frozen—Adulteration With Filth, Involving the Presence of Escherichia coli

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a Compliance Policy Guide (CPG) relating to fresh and frozen crabmeat adulteration with filth involving the presence of *Escherichia coli* (*E. coli*). The CPG updates the previously issued CPG on this topic. The CPG provides guidance for FDA staff on the level of *E. coli* in crabmeat at which we may consider the crabmeat to be adulterated with filth.

DATES: Submit electronic or written comments on FDA's CPGs at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2014–D–1842 for "Compliance Policy Guide on Crabmeat—Fresh and Frozen—Adulteration with Filth, Involving the Presence of *Escherichia coli.*" Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the guidance to Office of Policy and Risk Management, Office of Regulatory Affairs, Office of Global Regulatory Operations and Policy, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Mary E. Losikoff, Center for Food Safety and Applied Nutrition (HFC–820), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–2300.

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of revised CPG Sec. 540.275 Crabmeat—Fresh and Frozen—Adulteration with Filth, Involving the Presence of *Escherichia coli.* The CPG updates the previously issued CPG Sec. 540.275 Crabmeat—Fresh and Frozen—Adulteration with Filth, Involving the Presence of *Escherichia coli.* We are issuing this CPG consistent with our good guidance practices regulation (21 CFR 10.115). The CPG represents the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

The CPG provides guidance for FDA staff on the level of *E. coli* in fresh or frozen crabmeat (*i.e.,* 3.6 Most Probable Number per gram (MPN/g) of *E. coli*) at which FDA may consider the crabmeat to be adulterated with filth under section 402(a)(4) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342(a)(4)). We revised the CPG for clarity and to update the format. Revisions generally include the addition of sections on Background and Policy, updates to the sections on Regulatory Action Guidance and Specimen Charges, and FDA office names. The CPG provides criteria that the FDA District Offices may use to determine whether to recommend an enforcement action. Consistent with our standard business process, the CPG provides guidance to the FDA field offices for submitting an enforcement action recommendation to FDA's Center for Food Safety and Applied Nutrition (CFSAN) for case review. The CPG also provides direct reference authority to the FDA field offices in certain situations. Rather than submitting the recommendation to CFSAN, direct reference authority allows the FDA field offices to submit the recommendation directly to the appropriate office in FDA's Office of Regulatory Affairs, thus streamlining the Agency's internal case review process. Specifically, in the section on Regulatory Action Guidance, we clarify that FDA's District Offices have direct reference authority for both domestic seizure and import refusal based on the criteria described in the CPG. We also clarify the specific types of legal action to which the criteria for recommendations apply. In addition, we provide specimen charges relating to domestic seizure and import refusal. The CPG also contains information that may be useful to the regulated industry and to the public.

In the **Federal Register** of December 16, 2014 (79 FR 74729), we made available draft CPG Sec. 540.275 "Crabmeat—Fresh and Frozen—Adulteration with Filth, Involving the Presence of *Escherichia coli.*" We gave interested parties an opportunity to submit comments on the draft CPG by February 17, 2015, for us to consider before beginning work on the final version of the CPG. We received no comments on the draft CPG. We are issuing the CPG with no changes other than for clarity and to update the format. The CPG announced in this notice finalizes the draft CPG dated December 2014.

II. Electronic Access

Persons with access to the Internet may obtain the CPG at either *http://www.fda.gov/ICECI/ComplianceManuals/CompliancePolicyGuidanceManual/default.htm* or *http://www.regulations.gov.* Use the FDA Web site listed in the previous sentence to find the most current version of the CPG.

Dated: April 25, 2016.

Katherine Bent,

Assistant Commissioner for Compliance Policy.

[FR Doc. 2016–09951 Filed 4–27–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0557]

Agency Information Collection Activities; Proposed Collection; Comment Request; Postmarket Surveillance

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for postmarket surveillance of medical devices.

DATES: Submit either electronic or written comments on the collection of information by June 27, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2013–N–0557 for "Agency Information Collection Activities; Proposed Collection; Comment Request; Postmarket Surveillance." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Postmarket Surveillance—21 CFR Part 822—OMB Control Number 0910–0449—Extension

Section 522 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360l) authorizes FDA to require a manufacturer to conduct postmarket surveillance (PS) of any device that meets the criteria set forth in the statute. The PS regulation establishes procedures that FDA uses to approve and disapprove PS plans. The regulation provides instructions to manufacturers so they know what information is required in a PS plan submission. FDA reviews PS plan submissions in accordance with part 822 (21 CFR part 822) in §§ 822.15 through 822.19 of the regulation, which describe the grounds for approving or disapproving a PS plan. In addition, the PS regulation provides instructions to manufacturers to submit interim and final reports in accordance with § 822.38. Respondents to this collection of information are those manufacturers who require postmarket surveillance of their products.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity/21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Postmarket surveillance submission (§§ 822.9 and 822.10)	131	1	131	120	15,720
Changes to PS plan after approval (§ 822.21)	15	1	15	40	600
Changes to PS plan for a device that is no longer marketed (§ 822.28)	80	1	80	8	640
Waiver (§ 822.29)	1	1	1	40	40
Exemption request (§ 822.30)	16	1	16	40	640
Periodic reports (§ 822.38)	131	3	393	40	15,720
Total	....	....	....	....	33,360

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Explanation of Reporting Burden Estimate. The burden captured in table 1 of this document is based on the data from FDA's internal tracking system. Sections 822.26, 822.27, and 822.34 do not constitute information collection subject to review under the PRA because it entails no burden other than that necessary to identify the respondent, the date, the respondents address, and the nature of the instrument (See 5 CFR 1320.3(h)(1)).

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity/21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Manufacturer records (§ 822.31)	131	1	131	20	2,620
Investigator records (§ 822.32)	393	1	393	5	1,965
Total					4,585

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Explanation of Recordkeeping Burden Estimate. FDA expects that at least some of the manufacturers will be able to satisfy the PS requirement using information or data they already have. For purposes of calculating burden, however, FDA has assumed that each PS order can only be satisfied by a 3-year clinically based surveillance plan, using three investigators. These estimates are based on FDA's knowledge and experience with postmarket surveillance.

Dated: April 19, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–09940 Filed 4–27–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

American Indians Into Nursing Program; Correction

AGENCY: Indian Health Service, HHS.

ACTION: Notice; correction.

SUMMARY: The Indian Health Service published a document in the **Federal Register** on March 28, 2016, for the FY 2016 American Indians into Nursing. The notice contained incorrect project period lengths.

FOR FURTHER INFORMATION CONTACT: Naomi Aspaas, BSN, RN, Program Official, Office of Human Resource, Division of Health Professions Support, 5600 Fishers Lane, Mail Stop: OHR 11E53A, Rockville, MD 20857, Telephone (301) 443–5710. (This is not a toll-free number.)

Correction

In the **Federal Register** of March 28, 2016, in FR Doc. 2016–06969, on page 17182, in the third column, under the heading "III. Eligibility Information, 1. Eligibility, (b) Priorities", the correct paragraphs should read as follows:

1. *Priority I:* At least two awards to public or private college or university, school of nursing which provides DNP, MSN, BSN, ADN (registered nurse, nurse practitioner, nurse midwife) degrees, not to exceed $400,000 per year up to a project period of three years.

2. *Priority II:* At least three awards to a Tribally-controlled community college, school of nursing which provides BSN and ADN (registered nurse) degrees, not to exceed $400,000 per year up to a project period of three years.

Dated: April 18, 2016.

Elizabeth A. Fowler,

Deputy Director for Management Operations, Indian Health Service.

[FR Doc. 2016–09939 Filed 4–27–16; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

Agency Information Collection Activities: Extension, With Changes, of an Existing Information Collection

AGENCY: U.S. Immigration and Customs Enforcement, DHS.

ACTION: 30-Day Notice of information collection for review; form no. I–352SA/I–352RA; electronic bonds online (eBonds) access; OMB control no. 1653–0046.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), is submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. This information collection was previously published in the **Federal Register** on January 26, 2016, Vol. 81 No. 4332 allowing for a 60 day comment period. No comments were received on this information collection. The purpose of this notice is to allow an additional 30 days for public comments.

Written comments and suggestions regarding items contained in this notice and especially with regard to the estimated public burden and associated response time should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for U.S. Immigration and Customs Enforcement, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, with changes, of a currently approved information collection.

(2) *Title of the Form/Collection:* Electronic Bonds Online (eBonds) Access.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–352SA (Surety eBonds Access Application and Agreement); Form I–352RA (eBonds Rules of Behavior Agreement); U.S Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or Households, Business or other non-profit. The information taken in this collection is necessary for ICE to grant access to eBonds and to notify the public of the duties and responsibilities associated with accessing eBonds. The I–352SA and the I–352RA are the two instruments used to collect the information associated with this collection. The I–352SA is to be completed by a Surety that currently holds a Certificate of Authority to act as a Surety on Federal bonds and details the requirements for accessing eBonds as well as the documentation, in addition to the I–352SA and I–352RA, which the Surety must submit prior to being granted access to eBonds. The I–352RA provides notification that eBonds is a Federal government computer system and as such users must abide by certain conduct guidelines to access eBonds and the consequences if such guidelines are not followed.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 50 annual burden hours.

Dated: April 25, 2016.

Scott Elmore,

Program Manager, Forms Management Office, Office of the Chief Information Officer, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2016–09934 Filed 4–27–16; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5944–N–01]

Notice of Extension of Time for Completion of Manufacturer Corrections Approved Under a Waiver of a Plan for Notification

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Notice of extension of time.

SUMMARY: This notice advises the public that HUD received a request from Champion Home Builders, Incorporated (Champion) for an extension of time to fully implement its plan to correct affected homes without implementation of a Plan of Notification. Certain manufactured homes built and sold by Champion contained certain fuel-burning Nortek furnace models with the in-line drain reversal, potentially causing the furnace to shut off because condensation will not drain. After reviewing Champion's request, HUD determined that Champion has shown good cause and granted its request for an extension. The requested extension is granted until May 2, 2016.

FOR FURTHER INFORMATION CONTACT: Pamela Beck Danner, Administrator, Office of Manufactured Housing Programs, Office of Housing Department of Housing and Urban Development, 451 Seventh Street SW., Room 9166, Washington, DC 20410, telephone 202–708–6423 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at 800–877–8339.

DATES: *Effective Date:* April 8, 2016.

SUPPLEMENTARY INFORMATION: The National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401–5426) (the Act) authorizes HUD to establish the Federal Manufactured Home Construction and Safety Standards (Construction and Safety Standards), codified in 24 CFR part 3280. Section 615 of the Act (42 U.S.C. 5414) requires that manufacturers of manufactured homes notify purchasers if the manufacturer determines, in good faith, that a defect exists or is likely to exist in more than one home manufactured by the manufacturer and the defect relates to the Construction and Safety Standards or constitutes an imminent safety hazard to the purchaser of the manufactured home. The notification shall also inform purchasers whether the defect is one that the manufacturer will have corrected at no cost or is one that must be corrected at the expense of the purchaser/owner. The manufacturer is responsible for notifying purchasers of the defect within a reasonable time after discovering the defect.

HUD's procedural and enforcement provisions at 24 CFR part 3282, subpart I (Subpart I) implement these notification and correction requirements. If a manufacturer determines that it is responsible for providing notification under § 3282.405 and correction under § 3282.406, the manufacturer must prepare a plan for notifying purchasers of the homes containing the defect pursuant to §§ 3282.408 and 3282.409. Notification of purchasers must be accomplished by certified mail or other more expeditious means that provides a receipt. Notification must be provided to each retailer or distributor to whom any manufactured home in the class of homes containing the defect was delivered, to the first purchaser of each manufactured home in the class of manufactured homes containing the defect, and to other persons who are a registered owners of a manufactured home in the class of homes containing the defect. The manufacturer must complete the implementation of the plan for notification and correction on or before the deadline approved by the State Administrative Agency or HUD. Pursuant to § 3282.407(c), manufacturers may request a waiver of the notification requirements if, among other things, all affected homes have been identified and the manufacturer agrees to correct all affected homes within a specific time from the approval date.

Under § 3282.410(c), the manufacturer may request an extension of a previously established deadline if it shows good cause for the extension and HUD decides that the extension is justified and not contrary to the public interest. If the request for extension is approved, § 3282.410(c) requires that HUD publish notice of the extension in the **Federal Register**.

On December 25, 2015, Champion[1] notified HUD and requested a waiver of notification for certain manufactured homes that contained furnaces with circuit breaker wiring labels that if followed, would result in incorrect electrical circuit completion. Specifically, the homes were installed with certain Nortek furnaces, which were subsequently voluntarily identified by Nortek as being affected by its labeling problem. HUD approved Champion's waiver request on February 2, 2016. On April 8, 2016, Champion submitted a request for an extension regarding the completion of corrections required, originally to be completed within 60 days of HUD's waiver approval (by April 2, 2016). Pursuant to its waiver request, Champion stated that it was working with the furnace manufacturer (Nortek) to correct affected homes in the hands of consumers.

Champion by letter dated April 8, 2016, requested an extension of 30 days to complete the correction process. This notice advises that HUD, on April 8, 2016, concluded that Champion has shown good cause and that the extension is justified and not contrary to the public interest, and granted the requested extension until May 2, 2016. This extension permits Champion to continue its good faith efforts to correct affected homes at no cost to affected homeowners.

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[1] Information about Champion Homes can be found at *http://www.championhomes.com.*

Dated: April 25, 2016.

Pamela Beck Danner,

Administrator, Office of Manufactured Housing Programs.

[FR Doc. 2016–09963 Filed 4–27–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5943–N–01]

Notice of Extension of Time for Completion of Manufacturer Corrections Approved Under a Waiver of a Plan for Notification

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Notice of extension of time.

SUMMARY: This notice advises the public that HUD received a request from Champion Home Builders, Incorporated (Champion) for an extension of time to fully implement its plan to correct affected homes without implementation of a Plan of Notification. Certain manufactured homes built and sold by Champion contained certain Nortek furnace models with the potential for incorrect wiring of circuit breakers used for over-current protection of the furnace. After reviewing Champion's request, HUD determined that Champion has shown good cause and granted its request for an extension. The requested extension is granted until May 4, 2016.

FOR FURTHER INFORMATION CONTACT: Pamela Beck Danner, Administrator, Office of Manufactured Housing Programs, Office of Housing Department of Housing and Urban Development, 451 Seventh Street SW., Room 9166, Washington, DC 20410, telephone 202–708–6423 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at 800–877–8339.

DATES: *Effective Date:* April 8, 2016.

SUPPLEMENTARY INFORMATION: The National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401–5426) (the Act) authorizes HUD to establish the Federal Manufactured Home Construction and Safety Standards (Construction and Safety Standards), codified in 24 CFR part 3280. Section 615 of the Act (42 U.S.C. 5414) requires that manufacturers of manufactured homes notify purchasers if the manufacturer determines, in good faith, that a defect exists or is likely to exist in more than one home manufactured by the manufacturer and the defect relates to the Construction and Safety Standards or constitutes an imminent safety hazard to the purchaser of the manufactured home. The notification shall also inform purchasers whether the defect is one that the manufacturer will have corrected at no cost or is one that must be corrected at the expense of the purchaser/owner. The manufacturer is responsible for notifying purchasers of the defect within a reasonable time after discovering the defect.

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Under § 3282.410(c), the manufacturer may request an extension of a previously established deadline if it shows good cause for the extension and HUD decides that the extension is justified and not contrary to the public interest. If the request for extension is approved, § 3282.410(c) requires that HUD publish notice of the extension in the **Federal Register**.

On December 25, 2015, Champion[1] notified HUD and requested a waiver of notification for certain manufactured homes that contained furnaces with circuit breaker wiring labels that if followed, would result in incorrect electrical circuit completion. Specifically, the homes were installed with certain Nortek furnaces, which were subsequently voluntarily identified by Nortek as being affected by its labeling problem. HUD approved Champion's waiver request on January 4, 2016, and subsequently approved an additional 30 days on March 4, 2016. On April 8, 2016, Champion submitted a request for an additional extension regarding the completion of corrections required, originally to be completed within HUD's waiver approval deadline (by April 4, 2016). Pursuant to its waiver request, Champion stated that it was working with the furnace manufacturer (Nortek) to correct affected homes in the hands of consumers.

Champion by letter dated April 8, 2016, requested an extension of 30 days to complete the correction process. This notice advises that HUD, on April 8, 2016, concluded that Champion has shown good cause and that the extension is justified and not contrary to the public interest, and granted the requested extension until May 4, 2016. This extension permits Champion to continue its good faith efforts to correct affected homes at no cost to affected homeowners.

Dated: April 25, 2016.

Pamela Beck Danner,

Administrator, Office of Manufactured Housing Programs.

[FR Doc. 2016–09962 Filed 4–27–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5911–N–01]

60-Day Notice of Proposed Information Collection Comment Request Fair Housing Initiatives Program Grant Application and Monitoring Reports

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO), Department of Housing and Urban Development (HUD).

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection

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[1] Information about Champion Homes can be found at *http://www.championhomes.com.*

described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* June 27, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: 25 CFR 125, Fair Housing Initiatives Program.

OMB Approval Number: 2529–0033.

Type of Request: Extension of currently approved collection.

Form Number: HUD 904 A, B and C, SF–425, SF–424, SF–LLL, HUD–2880, HUD–2990, HUD–2993, HUD–424CB, HUD–424–CBW, HUD–2994–A, HUD–96010, and HUD–27061.

Description of the need for the information and proposed use: The collection is needed to allow the Fair Housing Initiatives Program (FHIP) to request applicant information necessary to complete a grant application package during the Notice of Funding Availability (NOFA) grant application process. The collection is used to assist the Department in effectively evaluating grant application packages to select the highest ranked applications for funding to carry out fair housing enforcement and/or education and outreach activities under the following FHIP initiatives: Private Enforcement, Education and Outreach, and Fair Housing Organization. The collection is also needed for the collection of post-award report and other information used to monitor grants and grant funds. Information collected from quarterly and final progress reports and enforcement logs will enable the Department to evaluate the performance of agencies that receive funding and determine the impact of the program on preventing and eliminating discriminatory housing practices.

Respondents (*i.e.* affected public): 400.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Application Development	400	1	400	76.50	30,600	00	00
Quarterly Report	104	4	416	19	7904	00	00
Supplemental Outcome Report	104	1	104	19	1976	00	00
Enforcement Log	59	4	236	7	1652	00	00
Final Report	104	1	104	20	2040	00	00
Recordkeeping	104	1	104	21	2184	00	00
Total	876	14	1366	187.50	46356	00	00

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: April 21, 2016.

Bryan Greene,

General Deputy Assistant Secretary for the Office of Fair Housing and Equal Opportunity.

[FR Doc. 2016–09961 Filed 4–27–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2016–N046; FVES59420300000F2 14X FF03E00000]

MidAmerican Wind Energy Habitat Conservation Plan; Draft Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare an environmental impact statement; notice of scoping meetings; and request for comments.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended (NEPA), we are advising the public that we intend to prepare an environmental impact statement (EIS) on a proposed Endangered Species Act (ESA) incidental take permit (ITP) application from MidAmerican Energy

Company (MEC) for the federally endangered Indiana bat, the federally threatened northern long-eared bat, the little brown bat, and the bald eagle. We are also announcing the initiation of a public scoping process to engage Federal, Tribal, State, and local governments; special interest groups; and the public in the identification of issues and concerns, potential impacts, and possible alternatives to the proposed action.

MEC is currently operating (20) and constructing (2) wind energy facilities in the State of Iowa capable of generating more than 4,040 megawatts (MW) of wind generation capacity, and expects to construct additional wind energy projects over the next 30 years. MEC is preparing a habitat conservation plan (HCP) in support of its ITP application for both MEC's existing facilities and facilities presently under construction.

Construction, operation, maintenance, decommissioning, reclamation, and repowering of wind energy facilities, as well as activities associated with the management of mitigation land, have the potential to impact certain bat and bird species. Species to be covered in the MEC HCP include the federally listed endangered Indiana bat, the federally listed threatened northern long-eared bat, the unlisted little brown bat and the bald eagle, which is protected under the Eagle Act. As allowed under the Eagle Act, we anticipate extending Eagle Act take authorization for bald eagle through an ESA Section 10(a)(1)(B) permit associated with the HCP, provided MEC is in full compliance with the terms and conditions of the permit and Eagle Act.

DATES: Public scoping will begin with the publication of this NOI in the **Federal Register** and will continue through May 31, 2016. We will consider all comments on the scope of the EIS analysis that are received or postmarked by this date. Comments received or postmarked after this date will be considered to the extent practicable. We will conduct two public scoping meetings during the scoping period. The scoping meetings will provide the public with an opportunity to ask questions, discuss issues with Service and State staff regarding the EIS, and provide written comments.

- May 17, 2016—Council Bluffs Public Library, 400 Willow Avenue Council Bluffs, Iowa, 5:30 to 7 p.m.
- May 18, 2016—FFA Enrichment Center, 1055 SW Prairie Trail Parkway, Ankeny, Iowa, 5:30 to 7 p.m.

In addition, we will host an online webinar on April 20, 2016 at 1:00 p.m. Central Time. Additional information on the proposed action, including how to participate in the webinar, is provided on the Internet at: *http://www.fws.gov/midwest/rockisland/te/index.html.*

ADDRESSES: Send written comments via U.S. mail to the Field Supervisor, U.S. Fish and Wildlife Service, Rock Island Field Office, 1511 47th Avenue, Moline, Illinois 61265; by facsimile at 309–757–5807; or by electronic mail to *RockIsland@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Amber Schorg at 309–757–5800, extension 222 (telephone) or *amber_schorg@fws.gov* (email). If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Introduction

Pursuant to the NEPA, 42 U.S.C. 4321 *et seq.*, we advise the public that we intend to prepare an environmental impact statement (EIS) to evaluate impacts associated with several alternatives related to the potential issuance of ITPs to MEC (Service's proposed action). ITPs would be expected to cover the federally endangered Indiana bat (*Myotis sodalis*), the federally threatened northern long-eared bat (*Myotis septentrionalis*), the little brown bat (*Myotis lucifugus*), and the bald eagle (*Haliaeetus leucocephalus*). We are also announcing the initiation of a public scoping process to engage Federal, Tribal, State, and local governments, special interest groups, and the public in the identification of issues and concerns, potential impacts, and possible alternatives to our proposed action.

Section 9 of the ESA prohibits "take" of fish and wildlife species listed as endangered under section 4 (16 U.S.C. 1538, and 1533, respectively). The ESA implementing regulations extend, under certain circumstances, the prohibition of take to threatened species (50 CFR 17.31). Under section 3 of the ESA, the term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct (16 U.S.C. 1532(19)). The term "harm" is defined by regulation as an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). The term "harass" is defined in the regulations as an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

Under section 10 of the ESA, the Service may issue permits to authorize incidental take of federally listed fish and wildlife species. "Incidental take" is defined by the ESA as "take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity". To obtain an ITP, an applicant must submit an HCP that specifies (1) the impact that will likely result from the taking; (2) what steps the applicant will take to monitor, minimize and mitigate the impacts, and the funding that will be available to implement such steps; (3) what alternative actions to the taking the applicant considered and the reasons why the alternatives are not being utilized; and (4) how the applicant will carry out any other measures that we may require as being necessary or appropriate for purposes of the HCP. 50 CFR 17.22(b)(1)(iii); 50 CFR 17.32(b)(1)(iii)(C). If we find, after opportunity for public comment, with respect to the permit application and the related HCP that (1) the taking will be incidental; (2) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking; (3) the applicant will ensure that adequate funding for the HCP will be provided, as well as procedures to deal with unforeseen circumstances; (4) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (5) the measures, if any, required by us will be carried out; and we have received assurances that the plan will be implemented, then we will issue MEC the requested permit(s). 50 CFR 17.22, 17.32(b)(2)(i).

Eagles are protected under the Eagle Act, which prohibits take and disturbance of individuals and nests. "Take" under the Eagle Act includes any actions that pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, and disturb eagles. 16 U.S.C. 668c. "Disturb" is further defined in 50 CFR 22.3 as to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, (1) injury to an eagle, (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior. Our regulations at 50 CFR 22.11 allow Eagle Act take authorization to be extended to permittees authorized to take eagles by an ITP issued pursuant to section 10(a)(1)(B) of the ESA. Take coverage for bald eagles provided through an ITP applies for the duration of the permit, or until the amount or level of take authorized has been met, provided the permittee complies with all terms and conditions provided in the ITP.

Proposed MEC HCP

The purpose of the HCP process and subsequent issuance of an ITP is to authorize the incidental take of threatened or endangered species and eagles, not to authorize the underlying activities that result in take. This process ensures that the effects of the authorized incidental take will be adequately minimized and mitigated to the maximum extent practicable.

The MEC HCP will encompass land within the State of Iowa where MEC facilities currently exist, are presently under construction, and where MEC may develop future facilities. MEC currently has approximately 4,050 megawatts (MW) of wind generation capacity installed or under construction and anticipates developing additional wind generation capacity over the requested 30-year term of their ITPs. Activities to be covered by the proposed HCP include those necessary to construct, operate, maintain and repair, decommission and reclaim, and repower utility-scale, multi-turbine wind energy projects within the State of Iowa. Covered activities also include development and management of mitigation lands and monitoring.

The MEC HCP would potentially cover four species that are subject to injury or mortality at wind generation facilities, including two federally listed species and two unlisted species. The two federally listed species are the Indiana bat and the northern long-eared bat. The two unlisted species are the little brown bat and the bald eagle. Species may also be added or deleted as the MEC HCP is developed, based on further analysis, new information, agency consultation, and public involvement.

Environmental Impact Statement

NEPA (42 U.S.C. 4321 *et seq.*) requires that Federal agencies conduct an environmental analysis of their proposed actions to determine if the actions may significantly affect the human environment. Based on 40 CFR 1508.27 and 40 CFR 1508.2, we have determined that implementation of the proposed MEC HCP may have significant impacts on the human environment. Therefore, before deciding whether to issue ITPs to MEC, we will prepare an EIS to analyze the environmental impacts associated with those actions. The EIS will also include an analysis of a reasonable range of alternatives to the proposed action. Alternatives considered in the EIS may include, but are not limited to, variations in the permit term or permit structure; the level of take allowed; the level, location, or type of conservation, monitoring, or mitigation provided in the MEC HCP; the scope of covered activities; the list of covered species; or a combination of these factors. Additionally, a no action alternative will be included.

The EIS is intended to analyze and disclose potential environmental impacts that could result from the issuance of ITPs to MEC for its existing and future facilities in the State of Iowa, including subsequent implementation of its proposed HCP. For permitting decisions on existing facilities (20) and facilities presently under construction (2), the EIS will address potential environmental impacts at specific temporal and spatial scales. For permitting decisions on future facilities with uncertain temporal and/or spatial scales, the EIS will evaluate environmental impacts programmatically, and include a process for assessing the need for subsequent NEPA review on future permitting decisions. If we find that our initial NEPA review has sufficiently analyzed potential environmental impacts, we will rely upon the analysis provided in our initial NEPA review. On the other hand, if there is significant new information of relevance to the proposed action or its impacts, we may choose to supplement our NEPA review by developing separate, stand-alone environmental documents that make use of tiering and incorporation by reference.

Request for Information

We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on this notice. We will consider these comments in developing the draft EIS. We also seek specific comments on:

1. Biological information and relevant data concerning covered species;
2. Additional information concerning the range, distribution, population size, and population trends of covered species;
3. Direct, indirect, and cumulative impacts that implementation of the proposed covered activities could have on endangered, threatened, and other covered species, and their communities or habitats;
4. Other possible alternatives to the proposed action that the Service should consider;
5. Other current or planned activities in the subject area and their possible cumulative impacts on covered species;
6. The presence of archaeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns, which are required to be considered in project planning by the National Historic Preservation Act;
7. Issues, questions, or concerns with developing an EIS which may be supplemented in the future to support additional ITP applications from MEC; and
8. Identification of any other environmental issues that should be considered with regard to the proposed MEC HCP and permit action.

Public Availability of Comments

You may submit your comments and materials by one of the methods listed above in the **ADDRESSES** section. Before including your address, phone number, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—might be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we use in preparing the EIS, will be available for public inspection by appointment, during normal business hours, at the Services' Rock Island Field Office in Moline, Illinois. (see **FOR FURTHER INFORMATION CONTACT**).

Scoping Meetings

See **DATES** for the date/s and time/s of our public scoping meetings. The primary purpose of these meetings and public comment period is to provide the public with a general understanding of the background of the proposed action and to solicit suggestions and information on the scope of issues and alternatives we should consider when drafting the EIS. Written comments will be accepted at the meetings. Comments can also be submitted by methods listed in the **ADDRESSES** section. Once the draft EIS and proposed MEC HCP are complete and made available for review, there will be additional opportunity for public comment on the content of those documents.

Persons needing reasonable accommodations in order to attend and participate in the public meetings should contact the Service using one of the methods listed above in **ADDRESSES** no later than one week before the public meeting. Information regarding this proposed action is available in alternative formats, upon request.

Authority

We provide this notice under section 10 of the ESA (16 U.S.C. 1531 *et seq.*), section 668a of the Eagle Act (16 U.S.C. 668a–668d), NEPA (42 U.S.C. 4321 *et seq.*), and NEPA regulations (40 CFR 1501.7, 1506.5, 1506.6 and 1508.22).

Dated: April 11, 2016.

Lynn Lewis,

Assistant Regional Director, Ecological Services, Midwest Region.

[FR Doc. 2016–09945 Filed 4–27–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–LE–2016–N078; FF09L00200–FX–LE18110900000]

Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; Declaration for Importation or Exportation of Fish or Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This information collection is scheduled to expire on April 30, 2016. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must submit comments on or before May 31, 2016.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail), or *hope_grey@fws.gov* (email). Please include "1018–0012" in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey at *hope_grey@fws.gov* (email) or 703–358–2482 (telephone). You may review the ICR online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

Information Collection Request

OMB Control Number: 1018–0012.

Title: Declaration for Importation or Exportation of Fish or Wildlife, 50 CFR 14.61–14.64 and 14.94.

Service Form Numbers: 3–177 and 3–177a.

Type of Request: Extension of a currently approved collection.

Description of Respondents: Businesses or individuals that import or export fish, wildlife, or wildlife products; scientific institutions that import or export fish or wildlife scientific specimens; and government agencies that import or export fish or wildlife specimens for various purposes.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Activity	Number of responses	Completion time per response (minutes)	Total annual burden hours
3–177 hard copy submission	16,207	15	4,052
3–177 electronic submission	172,446	10	28,741
Fee waiver certification	190,874	1	3,181
Totals	379,527	....	35,974

Estimated Annual Nonhour Burden Cost: None.

Abstract: The Endangered Species Act (16 U.S.C. 1531 *et seq.*) makes it unlawful to import or export fish, wildlife, or plants without filing a declaration or report deemed necessary for enforcing the Act or upholding the Convention on International Trade in Endangered Species (CITES) (see 16 U.S.C. 1538(e)). With a few exceptions, businesses, individuals, or government agencies importing into or exporting from the United States any fish, wildlife, or wildlife product must complete and submit to the Service an FWS Form 3–177 (Declaration for Importation or Exportation of Fish or Wildlife). This form as well as FWS Form 3–177a (Continuation Sheet) and instructions for completion are available for electronic submission at *https://edecs.fws.gov.* These forms are also available in fillable format at *http://www.fws.gov/forms/.*

The information that we collect is unique to each wildlife shipment and enables us to:

- Accurately inspect the contents of the shipment;
- Enforce any regulations that pertain to the fish, wildlife, or wildlife products contained in the shipment; and
- Maintain records of the importation and exportation of these commodities.

Businesses or individuals must file FWS Forms 3–177 and 3–177a with us at the time and port where they request clearance of the import or export of wildlife or wildlife products. Our regulations allow for certain species of wildlife to be imported or exported between the United States and Canada or Mexico at U.S. Customs and Border Protection ports, even though our wildlife inspectors may not be present.

In these instances, importers and exporters may file the forms with U.S. Customs and Border Protection. We collect the following information:

(1) Name of the importer or exporter and broker.

(2) Scientific and common name of the fish or wildlife.

(3) Permit numbers (if permits are required).

(4) Description, quantity, and value of the fish or wildlife.

(5) Natural country of origin of the fish or wildlife.

In addition, certain information, such as the airway bill or bill of lading number, the location of the shipment containing the fish or wildlife for inspection, and the number of cartons containing fish or wildlife, assists our wildlife inspectors if a physical examination of the shipment is necessary.

In 2009, we implemented a new user fee system intended to recover the costs of the compliance portion of the wildlife inspection program. Since that time, we have been made aware that we may have placed an undue economic burden on businesses that exclusively trade in small volumes of low-value, non-federally protected wildlife parts and products. To address this issue, we implemented a program that exempts certain businesses from the designated port base inspection fees as an interim measure while we reassess the current user fee system. Businesses that possess a valid Service import/export license may request to participate in the fee exemption program through our electronic filing system (eDecs). Qualified licensees must create an eDecs filer account as an importer or exporter, if they do not already have one, and file their required documents electronically. To be an approved participating business in the program and receive an exemption from the designated port base inspection fee, the licensed business must certify that it will exclusively import or export nonliving wildlife that is not listed as injurious under 50 CFR part 16 and does not require a permit or certificate under 50 CFR parts 15 (Wild Bird Conservation Act), 17 (Endangered Species Act), 18 (Marine Mammal Protection Act), 20 and 21 (Migratory Bird Treaty Act), 22 (Bald and Golden Eagle Protection Act), or 23 (the Convention on International Trade in Endangered Species of Wild Fauna and Flora). The requesting business also must certify that it will exclusively import or export the above types of wildlife shipments where the quantity in each shipment of wildlife parts or products is 25 or fewer and the total value of each wildlife shipment is $5,000 or less. Any licensed business that has more than two wildlife shipments that were refused clearance in the 5 years prior to its request is not eligible for the program. In addition, any licensees that have been assessed a civil penalty, issued a Notice of Violation, or convicted of a misdemeanor or felony violation involving wildlife import or export will not be eligible to participate in the program.

Comments Received and Our Responses

Comments: On December 28, 2016, we published in the **Federal Register** (80 FR 80792) a notice of our intent to request that OMB renew approval for this information collection. In that notice, we solicited comments for 60 days, ending on February 26, 2016. We did not receive any comments.

Request for Public Comments

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB and us in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: April 25, 2016.

Tina A. Campbell,

Chief, Division of Policy, Performance, and Management Programs, U.S. Fish and Wildlife Service.

[FR Doc. 2016–09952 Filed 4–27–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV952000 L14400000.BJ0000.LXSSF2210000.241A; 13–08807; MO #4500092462; TAS: 14X1109]

Filing of Plats of Survey; NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

DATES: *Effective Date:* Unless otherwise stated filing is effective at 10:00 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: Michael O. Harmening, Chief, Branch of Geographic Sciences, Bureau of Land Management, Nevada State Office, 1340 Financial Blvd., Reno, NV 89502–7147, phone: 775–861–6490. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

1. The Plat of Survey of the following described lands was officially filed at the Bureau of Land Management (BLM) Nevada State Office, Reno, Nevada on March 4, 2016:

The plat, in 1 sheet, representing the dependent resurvey of a portion of the south boundary of Township 43 North, Range 24 East; and the dependent resurvey of a portion of the subdivisional lines and the subdivision of sections 5, 6, 7 and 8, Township 42 North, Range 24 East, Mount Diablo Meridian, under Group No. 938, was accepted February 28, 2016. This survey was executed to meet certain administrative needs of the Bureau of Land Management.

2. The Supplemental Plat of the following described lands was officially filed at the BLM Nevada State Office, Reno, Nevada on March 9, 2016:

The supplemental plat, in 1 sheet, showing the amended lottings in section 19, Township 22 North, Range 35 East, of the Mount Diablo Meridian, Nevada, under Group No. 961, was accepted March 7, 2016. This supplemental plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The survey and supplemental plat listed above are now the basic record for describing the lands for all authorized purposes. These records have been placed in the open files in the BLM Nevada State Office and are available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: April 22, 2016.

Michael O. Harmening,

Chief Cadastral Surveyor, Nevada.

[FR Doc. 2016–09933 Filed 4–27–16; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY–957000–16–L13100000–PP0000]

Filing of Plats of Survey, Nebraska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) is scheduled to file the plats of survey of the lands described below thirty (30) calendar days from the date of this publication in the BLM Wyoming State Office, Cheyenne, Wyoming.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Indian Affairs and the Bureau of Land Management and are necessary for the management of these lands. The lands referenced are:

The plat and field notes representing the corrective dependent resurvey of a portion of the First Guide Meridian East, through T. 24 N., between Rs. 8 and 9 E., the dependent resurvey of portions of the south boundary of the Omaha Indian Reservation, the subdivisional lines and subdivision of section lines, and the survey of the subdivision of certain sections, Township 24 North, Range 8 East, of the Sixth Principal Meridian, Nebraska, Group No. 179, was accepted April 19, 2016.

The plat representing the entire record of the corrective dependent resurvey of a portion of the subdivision of section 19, Township 24 North, Range 9 East, Sixth Principal Meridian, Nebraska, Group No. 182, was accepted April 19, 2016.

Copies of the preceding described plats and field notes are available to the public at a cost of $1.10 per page.

Dated: April 22, 2016.

John P. Lee,

Chief Cadastral Surveyor, Division of Support Services.

[FR Doc. 2016–09957 Filed 4–27–16; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2011–0012; DS63610000 DR2PS0000.CH7000 167D0102R2]

Major Portion Prices and Due Date for Additional Royalty Payments on Indian Gas Production in Designated Areas Not Associated With an Index Zone

AGENCY: Office of the Secretary, Office of Natural Resources Revenue (ONRR), Interior.

ACTION: Notice.

SUMMARY: Final regulations for valuing gas produced from Indian leases, published August 10, 1999, require ONRR to determine major portion prices and notify industry by publishing the prices in the **Federal Register**. The regulations also require ONRR to publish a due date for industry to pay additional royalties based on the major portion prices. Consistent with these requirements, this notice provides major portion prices for the 12 months of calendar year 2014.

DATES: The due date to pay additional royalties based on the major portion prices is June 27, 2016.

FOR FURTHER INFORMATION CONTACT: Michael Curry, Manager, Denver B, Western Audit & Compliance, ONRR; telephone (303) 231–3741; fax number (303) 231–3473; email *Michael.Curry@onrr.gov;* or Rob Francoeur, Denver B, Team 2, Western Audit & Compliance, ONRR; telephone (303) 231–3723; fax (303) 231–3473; email *Rob.Francoeur@onrr.gov.* Mailing address: Office of Natural Resources Revenue, Western Audit & Compliance, Denver B, P.O. Box 25165, MS 62520B, Denver, Colorado 80225–0165.

SUPPLEMENTARY INFORMATION: On August 10, 1999, ONRR published a final rule titled "Amendments to Gas Valuation Regulations for Indian Leases" effective January 1, 2000 (64 FR 43506). The gas valuation regulations apply to all gas production from Indian (Tribal or allotted) oil and gas leases, except leases on the Osage Indian Reservation.

The regulations require ONRR to publish major portion prices for each designated area not associated with an index zone for each production month beginning January 2000, as well as the due date for additional royalty payments. See 30 CFR 1206.174(a)(4)(ii). If you owe additional royalties based on a published major portion price, you must submit to ONRR by the due date, an amended form ONRR–2014, Report of Sales and Royalty Remittance. If you do not pay the additional royalties by the due date, ONRR will bill you late payment interest under 30 CFR 1218.54. The interest will accrue from the due date until ONRR receives your payment and an amended form ONRR–2014. The table below lists the major portion prices for all designated areas not associated with an index zone. The due date is the end of the month following 60 days after the publication date of this notice.

GAS MAJOR PORTION PRICES ($/MMBtu) FOR DESIGNATED AREAS NOT ASSOCIATED WITH AN INDEX ZONE

ONRR-designated areas	Jan 2013	Feb 2013	Mar 2013	Apr 2013
Blackfeet Reservation	3.42	6.58	4.24	3.82
Fort Belknap	5.61	6.76	6.24	5.00
Fort Berthold	6.40	10.27	10.48	5.19
Fort Peck Reservation	6.55	7.28	7.87	6.64
Navajo Allotted Leases in the Navajo Reservation	4.68	5.59	5.39	4.58
Turtle Mountain Reservation	7.05	7.31	8.64	5.14

ONRR-designated areas	May 2013	Jun 2013	Jul 2013	Aug 2013
Blackfeet Reservation	3.69	3.82	3.30	3.14
Fort Belknap	5.11	5.12	4.85	4.69
Fort Berthold	5.04	5.01	4.66	4.20
Fort Peck Reservation	5.17	5.00	4.79	4.49
Navajo Allotted Leases in the Navajo Reservation	4.66	4.52	4.52	3.98

ONRR-designated areas	May 2013	Jun 2013	Jul 2013	Aug 2013
Turtle Mountain Reservation	5.05	4.97	4.24	4.14

ONRR-designated areas	Sep 2013	Oct 2013	Nov 2013	Dec 2013
Blackfeet Reservation	3.13	2.81	2.99	2.34
Fort Belknap	4.77	4.75	4.89	5.10
Fort Berthold	4.24	4.09	4.37	4.83
Fort Peck Reservation	4.70	4.31	3.52	3.10
Navajo Allotted Leases in the Navajo Reservation	4.14	3.96	3.80	4.24
Turtle Mountain Reservation	4.49	4.06	4.00	3.63

For information on how to report additional royalties due to major portion prices, please refer to our Dear Payor letter dated December 1, 1999, on the ONRR Web site at *http://www.onrr.gov/ReportPay/PDFDocs/991201.pdf.*

Dated: April 6, 2016.

Gregory J. Gould,

Director, Office of Natural Resources Revenue.

[FR Doc. 2016–09905 Filed 4–27–16; 8:45 am]

BILLING CODE 4335–30–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2016–0001; DS63610000 DR2000000.CH7000 167D0102R2]

Temporary Physical Address Change for General Ledger Team

AGENCY: Office of Natural Resources Revenue, Interior.

ACTION: Notice.

SUMMARY: ONRR is temporarily changing its physical address for courier services and personal deliveries.

DATES: Effective April 13, 2016.

FOR FURTHER INFORMATION CONTACT: Darrel Redford, Supervisory Accountant, at (303) 231–3085, or email at *Darrel.Redford@onrr.gov*

SUPPLEMENTARY INFORMATION: Effective April 13, 2016, all courier services and personal deliveries should be made to ONRR at the Denver Federal Center, Building 53, entrance E–20. Visitor parking is available near entrance E–20, with a phone to request entry. Call Armando Salazar at (303) 231–3585 or Janet Giron at (303) 231–3088 to gain entrance.

Dated: April 12, 2016.

Gregory J. Gould,

Director, Office of Natural Resources Revenue.

[FR Doc. 2016–09906 Filed 4–27–16; 8:45 am]

BILLING CODE 4335–30–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Leucadia National Corporation; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Leucadia National Corporation,* Civil Action No. 1:15–cv–01547–RDM. On September 22, 2015, the United States filed a Complaint alleging that Leucadia National Corporation ("Leucadia") violated the premerger notification and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a, with respect to its acquisition of voting securities of KCG Holdings, Inc. The proposed Final Judgment, filed at the same time as the Complaint, requires Leucadia to pay a civil penalty of $240,000.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's Web site at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's Web site, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Daniel P. Ducore, Special Attorney, c/o Federal Trade Commission, 600 Pennsylvania Avenue NW., CC–8416, Washington, DC 20580 (telephone: 202–326–2526; email: *dducore@ftc.gov*).

Patricia A. Brink,

Director of Civil Enforcement.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, c/o Department of Justice, Washington, DC 20530, Plaintiff, v. *LEUCADIA NATIONAL CORPORATION, 520 Madison Avenue, New York, NY 10022,* Defendant.

CASE NO.: 1:15–cv–01547 JUDGE: Randolph D. Moss FILED: 09/22/2015

COMPLAINT FOR CIVIL PENALTIES FOR FAILURE TO COMPLY WITH THE PREMERGER REPORTING AND WAITING REQUIREMENTS OF THE HART-SCOTT RODINO ACT

The United States of America, Plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States and at the request of the Federal Trade Commission, brings this civil antitrust action to obtain monetary relief in the form of civil penalties against Defendant Leucadia National Corporation ("Leucadia"). Plaintiff alleges as follows:

NATURE OF THE ACTION

1. Leucadia violated the notice and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a ("HSR Act" or "Act"), with respect to the acquisition of voting securities of KCG Holdings, Inc. ("KCG") in July 2013.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 7A(g) of the Clayton Act, 15 U.S.C. 18a(g), and pursuant to 28 U.S.C. 1331, 1337(a), 1345, and 1355 and over the Defendant by virtue of Defendant's consent, in the Stipulation relating hereto, to the maintenance of this action

and entry of the Final Judgment in this District.

3. Venue is properly based in this District by virtue of Defendant's consent, in the Stipulation relating hereto, to the maintenance of this action and entry of the Final Judgment in this District.

THE DEFENDANT

4. Defendant Leucadia is a corporation organized under the laws of Delaware with its principal office and place of business at 520 Madison Avenue, New York, NY 10022. Leucadia is engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. 12, and Section 7A(a)(1) of the Clayton Act, 15 U.S.C. 18a(a)(1). At all times relevant to this complaint, Leucadia had sales or assets in excess of $141.8 million. Leucadia is the ultimate parent entity of Jeffries, LLC ("Jeffries").

OTHER ENTITIES

5. KCG is a corporation organized under the laws of Delaware with its principal place of business at 545 Washington Boulevard, Jersey City, NJ 07310. KCG is engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. 12, and Section 7A(a)(1) of the Clayton Act, 15 U.S.C. 18a(a)(1). At all times relevant to this complaint, KCG had sale or assets in excess of $14.2 million.

6. Goober Drilling LLC ("Goober") is a limited liability company organized under the laws of Oklahoma with its principal place of business at 4905 S. Perkins Road, Stillwater, OK 74074. Goober is engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. 12, and Section 7A(a)(1) of the Clayton Act, 15 U.S.C. 18a(a)(1). At all times relevant to this complaint, Goober had sales or assets in excess of $12 million.

THE HART-SCOTT-RODINO ACT AND RULES

7. The HSR Act requires certain acquiring persons and certain persons whose voting securities or assets are acquired to file notifications with the federal antitrust agencies and to observe a waiting period before consummating certain acquisitions of voting securities or assets. 15 U.S.C. 18a(a) and (b). These notification and waiting period requirements apply to acquisitions that meet the HSR Act's thresholds, which are adjusted annually. During most of 2013, the HSR Act's reporting and waiting period requirements applied to most transactions that would result in the acquiring person holding more than $70.9 million, and all transactions (regardless of the size of the acquiring or acquired persons) where the acquiring person would hold more than $283.6 million of the acquired person's voting securities and/or assets, except for certain exempted transactions.

8. The HSR Act's notification and waiting period are intended to give the federal antitrust agencies prior notice of, and information about, proposed transactions. The waiting period is also intended to provide the federal antitrust agencies with an opportunity to investigate a proposed transaction and to determine whether to seek an injunction to prevent the consummation of a transaction that may violate the antitrust laws.

9. Pursuant to Section (d)(2) of the HSR Act, 15 U.S.C. 18a(d)(2), rules were promulgated to carry out the purposes of the HSR Act. 16 CFR 801–803 ("HSR Rules").

The HSR Rules, among other things, define terms contained in the HSR Act.

10. Pursuant to section 801.13(a)(1) of the HSR Rules, 16 CFR 801.13(a)(1), "all voting securities of [an] issuer which will be held by the acquiring person after the consummation of an acquisition"—including any held before the acquisition—are deemed held "as a result of" the acquisition at issue.

11. Pursuant to sections 801.13(a)(2) and 801.10(c)(1) of the HSR Rules, 16 CFR 801.13(a)(2) and. § 801.10(c)(1), the value of publicly traded voting securities already held is the market price, defined to be the lowest closing price within 45 days prior to the subsequent acquisition.

12. Section 802.9 of the HSR Rules, 16 CFR 802.9, provides that acquisitions solely for the purpose of investment are exempt from the notification and waiting period requirement if the acquirer will hold ten percent or less of the issuer's voting securities.

13. Section 802.64 of the HSR Rules, 16 CFR 802.64, provides generally that certain defined institutional investors, including broker-dealers, may acquire up to 15% of the voting securities of an issuer without filing under the HSR Act and observing the waiting period, if the voting securities are acquired solely for the purpose of investment. Section (c)(1) of Rule 802.64 provides, however, that "no acquisition of voting securities of an institutional investor of the same type as any entity included within the acquiring person shall be exempt under this section."

14. Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1), provides that any person, or any officer, director, or partner thereof, who fails to comply with any provision of the HSR Act is liable to the United States for a civil penalty for each day during which such person is in violation. For violations occurring on or after February 10, 2009, the maximum amount of civil penalty is $16,000 per day, pursuant to the Debt Collection Improvement Act of 1996, Pub. L. 104–134, § 31001(s) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note), and Federal Trade Commission Rule 1.98, 16 CFR 1.98, 74 FR 857 (Jan. 9, 2009).

DEFENDANT'S PRIOR VIOLATION OF THE HSR ACT

15. On August 15, 2007, Leucadia acquired 8% of the non-corporate interests in Goober. At the time of the acquisition, Leucadia already held 42% of the non-corporate interests of Goober. As a result of the August 15 transaction, Leucadia acquired control of Goober as defined in the HSR Rules. The value of the membership interests held by Leucadia after the acquisition was approximately $125 million.

16. Although it was required to do so, Leucadia did not file under the HSR Act prior to acquiring Goober membership interests on August 15, 2007.

17. On October 24, 2008, Leucadia made a corrective filing under the HSR Act for the August 15, 2007, acquisition of Goober non-corporate interests. In a letter accompanying the corrective filing, Leucadia acknowledged that the transaction was reportable under the HSR Act, but asserted that the failure to file and observe the waiting period was inadvertent.

18. On January 7, 2009, the Premerger Notification Office of the Federal Trade Commission sent a letter to Leucadia indicating that it would not recommend a civil penalty action regarding the August 15, 2007 Goober acquisition, but stating that Leucadia "still must bear responsibility for compliance with the Act. In addition, it is accountable for instituting an effective program to ensure full compliance with the Act's requirements."

VIOLATION

19. On July 1, 2013, Leucadia, through Jeffries, acquired 16,467,774 shares of KCG voting securities. The KCG voting securities held as a result of the acquisition by Leucadia represented approximately 13.5% of KCG's outstanding voting securities and were valued at approximately $173 million.

20. Prior to acquiring the KCG voting securities, Leucadia sought advice from experienced HSR counsel as to whether the transaction was subject to the HSR reporting requirements. Counsel

concluded that the transaction was exempt under Section 802.64 of the HSR Rules because Jeffries was a broker-dealer within the meaning of the HSR Rules, Jeffries was acquiring the voting securities solely for the purpose of investment, and KCG was not a broker-dealer within the meaning of the HSR Rules.

21. KCG was a broker-dealer within the meaning of the HSR Rules and the exemption under Section 802.64 therefore did not apply. Leucadia was required to observe the notification and waiting period requirements of HSR prior to Jeffries acquiring the KCG voting securities.

24. On September 19, 2014, Leucadia made a corrective filing under the HSR Act for the KCG voting securities it had acquired on July 1, 2013. In a letter accompanying the corrective filing, Leucadia acknowledged that the acquisition was reportable under the HSR Act. The HSR waiting period expired on October 20, 2014.

25. Leucadia was in continuous violation of the HSR Act from July 1, 2013, when it acquired the KCG voting securities that resulted in it holding more than ten percent of the outstanding KCG voting securities valued in excess of the HSR Act's $70.9 million size-of-transaction threshold, through October 20, 2014, when the waiting period expired.

REQUESTED RELIEF

WHEREFORE, Plaintiff requests:

1. That the Court adjudge and decree that Defendant Leucadia's acquisition of KCG voting securities on July 1, 2013, was a violation of the HSR Act, 15 U.S.C. 18a; and that Defendant Leucadia was in violation of the HSR Act each day from July 1, 2013, through October 20, 2014.
2. That the Court order Defendant Leucadia to pay to the United States an appropriate civil penalty as provided by the HSR Act. 15 U.S.C. 18a(g)(1), the Debt Collection Improvement Act of 1996, Pub. L. 104–134, § 31001(s) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note), and Federal Trade Commission Rule 1.98, 16 CFR 1.98, 74 FR 857 (Jan. 9, 2009).
3. That the Court order such other and further relief as the Court may deem just and proper.
4. That the Court award the Plaintiff its costs of this suit.

Dated: September 22, 2015

FOR THE PLAINTIFF UNITED STATES OF AMERICA:

/s/
William J. Baer
DC Bar No. 324723
Assistant Attorney General
Department of Justice
Antitrust Division
Washington, DC 20530

/s/
Daniel P. Ducore
DC Bar No. 933721
Special Attorney

/s/
Roberta S. Baruch
DC Bar No. 269266
Special Attorney

/s/
Kenneth A. Libby
Special Attorney

/s/
Jennifer Lee
Special Attorney
Federal Trade Commission
Washington, DC 20580
(202) 326–2694

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. *LEUCADIA NATIONAL CORPORATION,* Defendant.

CASE NO.: 1:15–cv–01547 JUDGE: Randolph D. Moss

FILED: 04/20/2016

COMPETITIVE IMPACT STATEMENT

The United States, pursuant to the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement to set forth the information necessary to enable the Court and the public to evaluate the proposed Final Judgment that would terminate this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THIS PROCEEDING

On September 22, 2015, the United States filed a Complaint against Defendant Leucadia National Corporation ("Leucadia"), related to Leucadia's acquisition of voting securities of KCG Holdings, Inc. ("KCG") in 2013. The Complaint alleges that Leucadia violated Section 7A of the Clayton Act, 15 U.S.C. 18a, commonly known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act"). The HSR Act states that "no person shall acquire, directly or indirectly, any voting securities of any person" exceeding certain thresholds until that person has filed pre-acquisition notification and report forms with the Department of Justice and the Federal Trade Commission (collectively, the "federal antitrust agencies" or "agencies") and the post-filing waiting period has expired.[1] The purpose of the notification and waiting period is to allow the agencies an opportunity to conduct an antitrust review of proposed transactions before they are consummated.

The Complaint alleges that Leucadia, via an entity it controls, acquired voting securities of KCG in excess of the statutory threshold ($70.9 million at the time of acquisition) without making the required pre-acquisition filings with the agencies and without observing the waiting period, and that Leucadia and KCG each met the statutory size of person threshold at the time of the acquisition (Leucadaia and KCG had sales or assets in excess of $141.8 million and $14.2 million, respectively).

The Complaint further alleges that Leucadia previously violated the HSR Act's notification requirements when it acquired shares in Goober Drilling LLC ("Goober") in 2007. On August 15, 2007, Leucadia acquired 8% of the non-corporate interests in Goober which, when combined with its then existing interest in Goober, gave Leucadia control of Goober as defined in the HSR Rules. Although it was required to do so, Leucadia did not file under the HSR Act prior to acquiring Goober membership interests on August 15th. On October 24, 2008, Leucadia made a corrective filing under the HSR Act for the August 15, 2007, acquisition of Goober non-corporate interests. In a letter accompanying the corrective filing, Leucadia acknowledged that the transaction was reportable under the HSR Act, but asserted that the failure to file and observe the waiting period was inadvertent. On January 7, 2009, the Premerger Notification Office of the Federal Trade Commission sent a letter to Leucadia indicating that it would not recommend a civil penalty action regarding the 2007 Goober acquisition, but stated that Leucadia would be "accountable for instituting an effective program to ensure full compliance with the [HSR] Act's requirements."[2]

At the same time the Complaint was filed, the United States also filed a Stipulation and proposed Final Judgment that eliminates the need for a trial in this case. The proposed Final Judgment is designed to deter Leucadia's HSR Act violations. Under the proposed Final Judgment, Leucadia must pay a civil penalty in the amount of $240,000.

The United States and the Defendant have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the

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[1] 15 U.S.C. 18a(a).

[2] Complaint, ¶ 18.

United States first withdraws its consent. Entry of the proposed Final Judgment would terminate this case, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and punish violations thereof. Entry of this judgment would not constitute evidence against, or an admission by, any party with respect to any issue of fact or law involved in the case and is conditioned upon the Court's finding that entry is in the public interest.

II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATIONS OF THE ANTITRUST LAWS

A. Leucadia and the Acquisitions of KCG Voting Securities

Leucadia is a holding company with a market capitalization of approximately $8 billion. Through its subsidiaries, it engages in mining and drilling services, telecommunications, healthcare services, manufacturing, banking and lending, real estate, and winery businesses. Currently, Leucadia's largest holding is Jeffries Group, a global investment bank that provides clients with capital markets and financial advisory services, including institutional brokerage.

KCG is a global financial services firm engaging in market making, high-frequency trading, electronic execution, and institutional sales and trade.

On July 1, 2013, Leucadia, through Jeffries, acquired 16,467,774 shares of KCG voting securities. Leucadia's voting securities represented approximately 13.5% of KCG's outstanding voting securities and were valued at approximately $173 million. This exceeded the HSR Act's $70.9 million size-of-transaction threshold then in effect.

Prior to acquiring the Leucadia voting securities, Leucadia sought advice from experienced HSR counsel as to whether the transaction was subject to the HSR reporting requirements. Counsel concluded that the transaction was exempt under Section 802.64 of the HSR Rules because Jeffries was a broker-dealer within the meaning of the HSR Rules, Jeffries was acquiring the voting securities solely for the purpose of investment, and KCG was not a broker-dealer within the meaning of the HSR Rules. KCG was, however, a broker-dealer within the meaning of the HSR Rules and the exemption under Section 802.64 therefore did not apply. Leucadia was required to observe the notification and waiting period requirements of HSR prior to Jeffries acquiring the KCG voting securities. After discovering the missed filing, Leucadia promptly made a corrective filing on September 19, 2014. The waiting period expired on October 20, 2014.

B. Leucadia's Violation of HSR

As alleged in the Complaint, Leucadia acquired in excess of the $70.9 million in voting securities of KCG without complying with the pre-acquisition notification and waiting period requirements of the HSR Act. Leucadia's failure to comply undermined the statutory scheme and the purpose of the HSR Act. Leucadia's September 19, 2014, corrective filing included a letter acknowledging that the acquisitions were reportable under the HSR Act.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment imposes a $240,000 civil penalty designed to deter this Defendant and others from violating the HSR Act. The United States adjusted the penalty downward from the maximum because the violation was unintentional, the Defendant promptly self-reported the violation after discovery, and the Defendant is willing to resolve the matter by consent decree and avoid prolonged investigation and litigation. The penalty also reflects Defendant's previous violation of the HSR Act, as well as Defendant's good faith efforts to comply with HSR by seeking advice from counsel prior to the acquisition. The United States expects this penalty to deter Leucadia and others from violating the HSR Act. The relief will have a beneficial effect on competition because the agencies will be properly notified of acquisitions, in accordance with the law. At the same time, the penalty will not have any adverse effect on competition.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

There is no private antitrust action for HSR Act violations; therefore, entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust action.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and Defendant have stipulated that the proposed Final Judgment may be entered by this Court after compliance with the provision of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry of the decree upon this Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet Web site and, under certain circumstances, published in the **Federal Register**. Written comments should be submitted to: Daniel P. Ducore, Special Attorney, United States, c/o Federal Trade Commission, 600 Pennsylvania Avenue NW., CC–8416, Washington, DC 20580, Email: *dducore@ftc.gov.*

The proposed Final Judgment provides that this Court retains jurisdiction over this action, and the parties may apply to this Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

As an alternative to the proposed Final Judgment, the United States considered pursuing a full trial on the merits against the Defendant. The United States is satisfied, however, that the proposed relief is an appropriate remedy in this matter. Given the facts of this case, including the Defendant's self-reporting of the violation and willingness to settle quickly, the United States is satisfied that the proposed civil penalty is sufficient to address the violation alleged in the Complaint and to deter violations by similarly situated entities in the future, without the time, expense, and uncertainty of a full trial on the merits.

VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The APPA requires that remedies contained in proposed consent judgments in antitrust cases brought by the United States be subject to a sixty

(60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment is "in the public interest." 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one, as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States v. SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States v, U.S. Airways Group, Inc.*, 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (noting the court has broad discretion of the adequacy of the relief at issue); *United States v. InBev N.V./S.A.*, No. 08–1965 (JR), 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, at *3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.").[3]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft*, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460–62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest.*" More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[4] In determining whether a proposed settlement is in the public interest, a district court "must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." *SBC Commc'ns*, 489 F. Supp. 2d at 17; *see also U.S. Airways*, 38 F. Supp. 3d at 75 (noting that a court should not reject the proposed remedies because it believes others are preferable); *Microsoft*, 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983); *see also U.S. Airways*, 38 F. Supp. 3d at 76 (noting that room must be made for the government to grant concessions in the negotiation process for settlements (citing *Microsoft*, 56 F.3d at 1461)); *United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns*, 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459; *see also U.S. Airways*, 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 ("the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged"). Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459–60. As this Court recently confirmed in *SBC Communications*, courts "cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power." *SBC Commc'ns,* 489 F. Supp. 2d at 15.

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[3] The 2004 amendments substituted "shall" for "may" in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004), *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc'ns*, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

[4] *Cf. BNS*, 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"). *See generally Microsoft*, 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'").

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. § 16(e)(2); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns,* 489 F. Supp. 2d at 11.[5] A court can make its public interest determination based on the competitive impact statement and response to public comments alone. *U.S. Airways,* 38 F. Supp. 3d at 76.

VIII. DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Date: April 20, 2016
Respectfully Submitted,
____/s/ Kenneth A. Libby
Kenneth A. Libby
Special Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, c/o Department of Justice, Washington, D.C. 20530, Plaintiff, v. *LEUCADIA NATIONAL CORPORATION, 520 Madison Avenue, New York, NY 10022,* Defendant.
CASE NO.: 1:15–cv–01547
JUDGE: Randolph D. Moss
FILED: 09/22/2015

FINAL JUDGMENT

Plaintiff, the United States of America, having commenced this action by filing its Complaint herein for violation of Section 7A of the Clayton Act, 15 U.S.C. 18a, commonly known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976, and Plaintiff and Defendant Leucadia National Corporation, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by the Defendant with respect to any such issue:

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties hereto, it is hereby Ordered, Adjudged, and Decreed as follows:

I.

The Court has jurisdiction of the subject matter of this action and of the Plaintiff and the Defendant. The Complaint states a claim upon which relief can be granted against the Defendant under Section 7A of the Clayton Act, 15 U.S.C. 18a.

II.

Judgment is hereby entered in this matter in favor of Plaintiff United States of America and against Defendant, and, pursuant to Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1), the Debt Collection Improvement Act of 1996, Pub. L. 104–134 31001(s) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461), and Federal Trade Commission Rule 1.98, 16 CFR 1.98, 61 FR 54549 (Oct. 21, 1996), and 74 FR 857 (Jan. 9, 2009), Defendant Leucadia National Corporation is hereby ordered to pay a civil penalty in the amount of two hundred forty thousand dollars ($240,000). Payment of the civil penalty ordered hereby shall be made by wire transfer of funds or cashier's check. If the payment is made by wire transfer, Defendant shall contact Janie Ingalls of the Antitrust Division's Antitrust Documents Group at (202) 514–2481 for instructions before making the transfer. If the payment is made by cashier's check, the check shall be made payable to the United States Department of Justice and delivered to: Janie Ingalls, United States Department of Justice, Antitrust Division, Antitrust Documents Group, 450 5th Street NW., Suite 1024, Washington, DC 20530.

Defendant shall pay the full amount of the civil penalty within thirty (30) days of entry of this Final Judgment. In the event of a default or delay in payment, interest at the rate of eighteen (18) percent per annum shall accrue thereon from the date of the default or delay to the date of payment.

III.

Each party shall bear its own costs of this action.

IV.

Entry of this Final Judgment is in the public interest.

Dated: ________

United States District Judge

[FR Doc. 2016–09915 Filed 4–27–16; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Abolghasem Rezaei, M.D.; Decision and Order

On November 16, 2015, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Abolghasem Rezaei, M.D. (hereinafter, Registrant) of Lawton, Oklahoma. GX 1. The Show Cause Order proposed the revocation of Registrant's DEA Certificate of Registration, pursuant to which he is authorized to dispense controlled substances in schedules IV and V as a practitioner, on the ground that he does "not have authority to handle controlled substances in the State of Oklahoma, the State in which [he is] registered with the" Agency. *Id.* at 1.

More specifically, the Show Cause Order alleged that effective May 28, 2013, the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control (hereinafter, OBNDD) issued a Stipulation and Agreed Order to Registrant, pursuant to which his authority to dispense controlled substances in schedules II and III was suspended "for two years"; the Order then alleged that his Oklahoma registration "expired on October 31, 2014," and had not been renewed. *Id.*

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[5] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); *United States v. Mid-Am. Dairymen, Inc.,* No. 73–CV–681–W–1, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980, *22 (W.D. Mo. 1977) ("Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances."); S. Rep. No. 93–298, at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.").

The Show Cause Order thus alleged that Registrant did "not have authority in Oklahoma to order, dispense, prescribe or administer any controlled substances," and that as a consequence, DEA "must revoke [his] . . . registrations." *Id.* (citing 21 U.S.C. 802(21), 823(f), and 824(a)(3)).[1]

Thereafter, a DEA Diversion Investigator (DI) determined that Registrant was no longer practicing at his registered location and was advised by Agents of the OBNDD that the premises appeared vacant. GX 9, at 1. The DI did, however, obtain an address for Registrant in Lawton, Oklahoma, which appeared to be that of a residence, and mailed the Show Cause Order to Registrant by certified mail, return receipt requested to this address. *Id.* On November 30, 2015, the DI received back the signed return-receipt card. *Id.* According to the DI, "[t]he signature appeared similar to the signature of [Registrant] . . . on other DEA records, which [Registrant] signed." *Id.* The DI also emailed the Show Cause Order to Registrant at an email address which Registrant had listed when he applied for registration. *Id.;* GX 2, at 1; GX 8. According to the DI, "[t]he emailed copy was sent successfully on November 16, 2015, but I never received a response to" it. *Id.*

On January 5, 2016, the Government submitted its Request for Final Agency Action. Therein, the Government stated that neither Registrant, "nor anyone representing him[,] has requested a hearing or otherwise corresponded with DEA." Req. for Final Agency Action, at 5. In its Request, the Government sought a final order revoking Registrant's DEA registration based on the May 28, 2013 Stipulation and Agreed Order between the OBNDD and Registrant, as well as his act of allowing his state registration to expire on October 31, 2014. *Id.* at 3.

However, on March 21, 2016, the Government filed a further pleading. *See* Request for Dismissal of Order to Show Cause. Therein, the Government noted that effective March 4, 2016, Registrant had entered a subsequent Stipulation and Agreed Order with the OBNDD, pursuant to which the OBNDD agreed to renew his state registration subject to four conditions; the Government provided a copy of the Order with its filing. *Id.* at 2. Those stipulations were that Registrant shall: (1) "Remain on probation for 18 months beginning on the date of entry of" the Order; (2) "be prohibited from ordering, storing, dispensing or administering" any controlled substances "during his probation"; (3) "be prohibited from" prescribing controlled substances in schedule II or III "until January 1, 2017"; and (4) run a PMP report of "his own prescribing . . . at the end of each calendar month" and submit an "affidavit that he has reviewed the PMP" report to the OBNDD and state that it "accurately reflects the [controlled substance] prescriptions he has authorized." *In re Rezaei,* Stipulation and Agreed Order, at 2 (OBNDD, Mar. 4, 2016).

Noting that the sole basis for this proceeding was Registrant's lack of state authority and that the OBNDD's Order has restored his authority to prescribe schedule IV and V controlled substances, the Government no longer seeks the revocation of Registrant's DEA registration.[2] *See* Request for Dismissal of Order to Show Cause, at 3. Notwithstanding that the Government seeks an Order dismissing the Show Cause Order, it also requests an Order restricting Registrant's DEA registration "to the extent of his controlled substances authorization under Oklahoma state law." *Id.*

Based on the record submitted by the Government, I find that Respondent has been served in a constitutionally adequate manner and I find that service was effective no later than November 30, 2015. Based on the Government's further representation that since the date of service, neither Registrant, nor anyone representing him, has either requested a hearing or submitted a written statement in lieu of a hearing, I find that Registrant has waived his right to either request a hearing or to submit a written statement. I therefore issue this Decision and Final Order based solely on the Investigative Record submitted by the Government. I make the following findings.

Findings

Registrant is the holder of DEA Registration #FR4496267, pursuant to which he is authorized to dispense controlled substances in schedules IV and V, at the registered address of Family Practice Clinic & Minor Emergency Medicine, 4645 W. Gore Blvd., Suite 1–2, Lawton, Oklahoma. GX 2. Registrant's registration does not expire until April 30, 2017. *Id.*

Registrant is also the holder of an active medical license issued by the Oklahoma State Board of Medical Licensure and Supervision. According to the Board's Web site, Respondent is now practicing at 2502 West Gore Blvd., Lawton, Oklahoma. *See http://www.okmedicalboard.org/licensee/MD/23655.* He has also recently obtained a new state registration from the OBNDD. However, Registrant's OBNDD registration prohibits him "from ordering, storing, dispensing, or administering [controlled substances] from any [s]chedule during his probation," which runs for 18 months beginning on March 4, 2016, and it further prohibits him "from authorizing prescriptions for [s]chedule II or [s]chedule III [controlled substances] until January 1, 2017." Stipulation and Agreed Order, at 2.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823, "upon a finding that the registrant . . . has had his State license . . . suspended [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances." Moreover, Congress has defined "the term 'practitioner' [to] mean[] a . . . physician . . . or other person licensed, registered or otherwise permitted, by . . . the jurisdiction in which he practices . . . to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice.” 21 U.S.C. 802(21). Likewise, the CSA conditions the granting of a practitioner’s application for registration on his/her possession of authority to dispense controlled substances under state law. *See* 21 U.S.C. 823(f) (“The Attorney General shall register practitioners . . . to dispense . . . controlled substances . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.”). And of further note, the CSA defines the term “dispense” as meaning “to deliver a controlled substance to an ultimate user . . . *by, or pursuant to the lawful order* of, a practitioner.” *Id.* § 802(10) (emphasis added).

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[1] The Show Cause Order also notified registrant of his right to request a hearing on the allegations or to submit a written statement while waiving his right to a hearing, the procedure for electing either option, and the consequence for failing to elect either option. GX 1, at 2.

[2] The State Order, upon which this proceeding was based, contained numerous stipulated findings that clearly would have supported a *prima facie* case for revocation under the public interest standard of 21 U.S.C. 824(a)(4). These include: (1) That during a November 5, 2012 inspection, an OBNDD Agent and Oklahoma Board of Medical Licensure Investigator had conducted an inspection of Respondent's clinic and found that Demerol and other drugs were kept in a locked desk located in a common area of the clinic and that the key was kept in an unlocked drawer at the receptionist's desk; (2) that "Respondent was unable to produce any . . . order forms, invoices, or inventories" for the drugs in the desk; (3) that Respondent stored other controlled substances in an unlocked cabinet in an area of the clinic which all employees, as well as construction workers who were renovating the clinic, had access to; (4) that Respondent also kept controlled substances in a large plastic storage box on a counter below the aforesaid cabinet; (5) that during the inspection, Respondent submitted to a urinalysis and tested positive for oxycodone and that he "did not have a valid prescription" for the drug; (6) that Respondent's administration logs showed that "on at least 3 occasions," controlled drugs "were administered to either [himself] or [his] wife"; (6) that there was no patient file for two patients who were listed in the administration log; (7) that the drug administration log listed 11 entries for Demerol injections for "skin care" but did not list a patient name; (8) that Respondent's wife owned a skin care clinic that "had a separate address from the medical clinic" and which was unregistered, and that the OBNDD Agent inspected the clinic and found that controlled drugs were stored in an unlocked drawer in a treatment room and Respondent stated that the drugs had been prescribed but returned by his patients; (9) and that controlled drugs that were stored at the skin care clinic were either administered or dispensed to that clinic's "clients without maintaining an administration log." GX 6, at 1–4.

Thus, the Agency has repeatedly held that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner’s registration. *See, e.g., James L. Hooper,* 76 FR 71371 (2011), *pet. for rev. denied,* 481 Fed. Appx. 826 (4th Cir. 2012). And because a practitioner’s authority under the CSA is based on his/her authority to dispense controlled substances under the laws of the State in which he practices, the Agency has further held that “to the extent a practitioner is not authorized under state law to dispense certain categories or schedules of controlled substances, he can no longer lawfully dispense them under federal law.” *Kenneth Harold Bull,* 78 FR 62666, 62672 (2013).

For the same reason, where a state board limits a practitioner’s controlled substance authority by prohibiting him from possessing controlled substances or by limiting his authority to prescribing, the practitioner’s authority under his DEA registration must also be so limited. *See, e.g., Steven M. Abbadessa,* 74 FR 10077, 10082 (2009) (noting ambiguity in state agency’s order as to whether it authorized physician to administer controlled substances at his clinic and requiring him to provide evidence that such activity was authorized by the State prior to doing so); *cf. United States* v. *Moore,* 423 U.S. 122, 140–41 (1975) (“In the case of a physician, [the CSA] contemplates that he is authorized by the State to practice medicine and to dispense drugs in connection with his professional practice. The federal registration . . . extends no further.”).

Accordingly, although the OBNDD’s Stipulation and Agreed Order effectively authorizes Registrant to prescribe schedule IV and V controlled substances, it affirmatively prohibits him from ordering, storing (possessing), administering and directly dispensing all controlled substances. While Registrant’s DEA registration does not authorize him to handle schedule II and III controlled substances in any manner, his registration currently provides authority for him to order, store, administer and directly dispense schedule IV and V controlled substances. Because Registrant’s DEA registration can only grant him authority to the extent that the State has granted him authority, I will order that his registration be restricted to authorize only the prescribing of controlled substances in schedules IV and V.

Also, in the event Registrant intends to seek authority to prescribe schedule II or III controlled substances upon the expiration of the OBNDD’s condition, he must apply for a modification of his DEA registration before doing so. *See* 21 CFR 1301.51. So too, in the event Registrant seeks to engage in the ordering, storing, dispensing or administering of any controlled substance upon the expiration of his probation, he must apply for a modification of his DEA registration before doing so. Finally, because the Oklahoma Medical Board’s records list Registrant’s practice address as being different from his DEA registered address, and it appears that Registrant is no longer practicing at the latter address, he is directed to inquire of the local DEA office as to whether he must obtain a modification of his registration to reflect his new practice address. *See* 21 CFR 1301.12(a) & (b).

Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration# FR4496267 issued to Abolghasem Rezaei, M.D., be, and it hereby is, restricted to authorize only the prescribing of controlled substances in schedules IV and V. This Order is effective immediately.

Dated: April 21, 2016.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2016–09973 Filed 4–27–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0011]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Application To Make and Register a Firearm (ATF Form 1 (5320.1)

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** 81 *FR* 8099, on February 17, 2016, allowing for a 60-day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until May 31, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gary Schaible, Industry Liaison Analyst, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), 99 New York Ave. NE., Washington, DC 20226 at email: *nfaombcomments@atf.gov.* Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a currently approved collection.

2. *The Title of the Form/Collection:* Application to Make and Register a Firearm.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: ATF Form 1 (5320.1).

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: Individuals or households; and State, Local or Tribal Government.

Abstract: This form is filed to obtain permission to make and register a National Firearms Act (NFA) firearm. Possession of an unregistered NFA firearm is illegal. The approval of the application effectuates the registration of the firearm to the applicant. For any person other than a government agency, the making incurs a tax of $200.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 25,716 respondents will take 3.86 hours to respond.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 102,808 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E–405B, Washington, DC 20530.

Dated: April 22, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–09874 Filed 4–27–16; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0014]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Application for Tax Paid Transfer and Registration of Firearm (ATF Form 4 (5320.4)

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** 81 *FR* 8100, on February 17, 2016, allowing for a 60-day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until May 31, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please Gary Schaible, Industry Liaison Analyst, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), 99 New York Ave. NE., Washington, DC 20226 at email: *nfaombcomments@atf.gov.* Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a currently approved collection.

2. *The Title of the Form/Collection:* Application for Tax Paid Transfer and Registration of Firearm.

3. *The agency form number, if any, and the applicable component of the Department* sponsoring the collection:

Form number: ATF Form 4 (5320.4).

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: Individuals or households; and Not-for-profit institutions.

Abstract: This form is filed to obtain permission to transfer and register a National Firearms Act (NFA) firearm. A transfer without approval and possession of an unregistered NFA firearm are illegal. The approval of the application effectuates the registration of a firearm to the transferee. There is a tax of $5 or $200 on the transfer of an NFA firearm with certain exceptions (see ATF Forms 3 and 5 for tax exempt transfer information).

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 123,339 respondents will take 3.66 hours to respond.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 466,755 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E–405B, Washington, DC 20530.

Dated: April 22, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–09875 Filed 4–27–16; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

On April 21, 2016, the Department of Justice lodged a proposed consent decree with the United States District Court for the Western District of Washington in the lawsuit entitled *United States* v. *Clallam County, Washington, et al.*, Civil Action No. 16–5300.

The United States filed this lawsuit under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") against Clallam County, Washington, the Washington Department of Natural Resources, and the Washington National Guard. The complaint seeks recovery of costs incurred by the United States Environmental Protection Agency in responding to the release of hazardous substances at the Salt Creek Firing Range Site located primarily in Clallam County, Washington. The consent decree resolves the liability of the three defendants named in the lawsuit, as well as the United States Army Corps of Engineers and the United States Coast Guard. The United States, on behalf of the Army Corps of Engineers and the Coast Guard, will pay $579,198.03; Clallam County will pay $165,485.15; Washington State Department of Natural Resources will pay $74,468.32; and the Washington National Guard will pay $8,274.26. In return, the United States agrees not to sue the defendants under Section 107 of CERCLA.

Publication of this notice opens a period for public comment on the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Clallam County, Washington, et al.*, D.J. Ref. No. 90–11–3–10945. All comments must be submitted not later than thirty (30) days after the publication of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed consent decree may be examined and downloaded at this Justice Department Web site: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $6.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Susan M. Akers,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2016–09918 Filed 4–27–16; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; National Firearms Act (NFA) Responsible Person Questionnaire (ATF Form 5320.23)

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** 81 FR 9224, on February 24, 2016, allowing for a 60-day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until May 31, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gary Schaible, Industry Liaison Analyst, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), 99 New York Ave NE., Washington, DC 20226 at email: *nfaombcomments@atf.gov.* Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* New collection.

2. *The Title of the Form/Collection:* National Firearms Act (NFA) Responsible Person Questionnaire.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: ATF Form 5320.23.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households.

Other: State Local or Tribal Government.

Abstract: This form is filed with ATF Form 1, 4 or 5 applications when the applicant, maker, or transferee is other than an individual or government agency. This allows ATF to conduct background checks of persons who make, acquire, or possess firearms.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 115,829 respondents will take .25 hours to respond.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 57,914.5 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E–405B, Washington, DC 20530.

Dated: April 22, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–09877 Filed 4–27–16; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0015]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Application for Tax Exempt Transfer and Registration of Firearm (ATF Form 5 (5320.5)

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** 81 FR 8100, on February 17, 2016, allowing for a 60-day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until May 31, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please Gary Schaible, Industry Liaison Analyst, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), 99 New York Ave. NE., Washington, DC 20226 at email: *nfaombcomments@atf.gov.* Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a currently approved collection.

2. *The Title of the Form/Collection:* Application for Tax Exempt Transfer and Registration of Firearm.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: ATF Form 5 (5320.5).

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: State, Local, or Tribal Government.

Other (if applicable): Individuals or Households; Business or other for-Profit; and Not-for-profit institutions.

Abstract: This form is filed to obtain permission to make and transfer a National Firearms Act (NFA) firearm. Transfer without approval and possession of an unregistered NFA firearm are illegal. The approval of the application effectuates the registration of a firearm to the transferee. The transferee claims an exemption from the transfer tax by filing this application.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 10,591 respondents will take .51 hours to respond.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 5,350 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E–405B, Washington, DC 20530.

Dated: April 22, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–09876 Filed 4–27–16; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (NIJ) Docket No. 1708]

Body Worn Camera Technologies Market Survey

AGENCY: National Institute of Justice (NIJ), Justice.

ACTION: Notice of request for information.

SUMMARY: The NIJ is soliciting information in support of the upcoming National Criminal Justice Technology Research, Test, and Evaluation Center (NIJ RT&E Center) "Market Survey of Body Worn Camera (BWC) Technologies." This market survey, which will identify commercially available body worn camera systems, will be published by NIJ to assist purchasing agents or other representatives of law enforcement officials in their assessment of relevant information prior to making purchasing decisions. Comments with regard to the market survey itself, including which

categories of information are appropriate for comparison, as well as promotional material (*e.g.*, slick sheets) and print-quality images in electronic format, are also invited.

DATES: Responses to this request will be accepted through 11:59 p.m. Eastern Standard Time on May 31, 2016.

ADDRESSES: Responses to this request may be submitted electronically in the body of, or as an attachment to, an email sent to *administrator@nijrtecenter.org* with the required subject line "Body Worn Camera Federal Register Response." Questions and responses may also be sent by mail (please allow additional time for processing) to the following address: National Criminal Justice Technology Research, Test and Evaluation Center, ATTN: Body Worn Camera Federal Register Response, Johns Hopkins University Applied Physics Laboratory, 11100 Johns Hopkins Road, Mail Stop 17–N444, Laurel, MD 20723–6099.

FOR FURTHER INFORMATION CONTACT: For more information on this request, please contact Vivian Hung (NIJ RT&E Center) by telephone at (240) 228–2286 or *administrator@nijrtecenter.org.* For more information on the NIJ RT&E Center, visit *http://nij.gov/funding/awards/Pages/award-detail.aspx?award=2013-MU-CX-K111* and view the description, or contact Jack Harne (NIJ) by telephone at 202–616–2911 or at *Jack.Harne@usdoj.gov.* Please note that these are not toll-free telephone numbers.

SUPPLEMENTARY INFORMATION:

Information Sought: Information is sought for an upcoming "Market Survey of Body Worn Camera (BWC) Technologies," which seeks to identify commercially available body worn camera systems for law enforcement use.

Usage: This market survey will be published by NIJ to assist law enforcement agencies in their assessment of relevant information prior to making purchasing decisions.

Information Categories: Comments are invited with regard to the market survey, including which categories of information are appropriate for comparison, as well as promotional material (*e.g.*, slick sheet) and print-quality photographs of the technology. At a minimum, the Center intends to include the following categories of information for *each* Body Worn Camera technology that may be of use to law enforcement officials:

1. Vendor Information

a. Name
b. Address and phone number of corporate office
c. Web site
d. Years your company has been in business
e. Number and types of customers (*e.g.*, municipal, county, or state officers)
f. Location where technology is manufactured, assembled, or refurbished

2. Product Information—BWC

a. General
  i. Name and model number
  ii. Physical dimensions (height × width × depth, in inches) of device
  iii. Weight (in ounces) of device
  iv. Mounting options (*e.g.*, head, chest, glasses, helmet, etc.)
    1. Accessories needed for optional mounting locations
  v. Whether the BWC is able to mount on a vehicle for dashboard applications
    1. If so, any accessories needed
  vi. LCD display (*i.e.*, whether the BWC has a playback screen for on-person video viewing)
  vii. Recording capacity (*i.e.*, the memory storage capacity of the BWC)
  viii. Operating conditions or limitations (*e.g.*, temperature, humidity, precipitation, high wind, etc.)
b. Video and Optics
  i. Maximum video resolution of the BWC (*e.g.*, 640×480, 1080p)
  ii. Field of view of the BWC (*e.g.*, 75°, 120°)
  iii. Lux rating of the BWC (*i.e.*, minimum amount of light needed to produce an acceptable image)
  iv. Whether the BWC has a night mode and in what format (*e.g.*, low light, IR lens, etc.)
  v. Recording speed of the BWC (*e.g.*, 30 frames per second)
  vi. Recording format of the BWC (*e.g.*, MPEG–4, MOV)
  vii. Recording time of the BWC under default resolution settings
  viii. Whether the BWC captures still photos
  ix. Whether the BWC embeds a time/date stamp in the recorded video
    1. Whether there are any means to authenticate and validate the integrity of the time/date stamp
  x. Whether the BWC has a pre-event record feature (*i.e.*, a feature that includes a data buffer before the recorded event to show what triggered the recording)
    1. If so, the time buffered and whether audio is recorded
  xi. Whether the BWC possesses an event marking capability
  xii. Whether the BWC has wireless capabilities to communicate with a computer or external DVR unit
c. Audio
  i. Microphone feature
  ii. Microphone sensitivity
  iii. Audio format of the BWC (*e.g.*, MP2, AAC)
  iv. Whether there is a default police radio interface for the BWC
d. Data Upload
  i. Single device vs. docking station for multiple video/audio upload
  ii. Data transfer method (*e.g.*, wire, wireless, removable media card, etc.)
  iii. Manual vs. automatic uploading capabilities
e. Battery Information
  i. Battery type used by the BWC and whether it is internal or removable
  ii. Recording duration
  iii. Battery standby duration
  iv. Battery charge time
  v. Battery lifetime until replacement needed
  vi. Battery replacement procedure and where it must be done (*e.g.*, field or factory), if applicable
  vii. Availability of supplemental charger for emergency battery charging (*e.g.*, hand crank, backup battery, external battery charger with USB, solar, etc.), if applicable
f. GPS
  i. Whether the BWC possesses a GPS
    1. If so, whether GPS coordinates are embedded in recorded video
  ii. Alternative geolocation methods (*e.g.*, using smartphone or Bluetooth information via cell towers)
g. Consumer Testing Results
  i. Sturdiness/fragility
    1. Drop test results
    2. Dust intrusion/water resistance rating (IPX scale)
    3. Ruggedized
    4. Pressure/depth
    5. Shock
    6. Vibrations
  ii. Whether the BWC has undergone environmental testing other than that listed above
    1. If so, specify tests, pass/fail results, and ratings received
h. Safeguards
  i. Privacy safeguards or features
    1. Remote viewing
    2. Remote activation/deactivation
    3. Privacy masking (*i.e.*, feature that allows blurring or completely blocking certain areas to protect personal privacy or sensitive information)
    4. Redacting/editing capabilities
  ii. Safeguards for cyber security, unintentional disassembly, jamming, or intentional damage
i. Regulatory
  i. Regulatory and Compliance safety

  requirements (*e.g.*, FCC approved) and/or any potential NIJ Technology Standards, if applicable
  ii. Radiation safety standards (*e.g.*, ANSI, ICRP, NCRP, EURATOM, etc.), if applicable
j. Warranty and Maintenance Plans
  i. Length of warranty (in months) that comes standard with the system/device and the components that are covered
  ii. Optional extended warranties available
    1. Duration and cost of extended warranties
  iii. Availability of extended maintenance plans
    1. Duration and cost of extended maintenance plans
  iv. Service contract costs
k. Auxiliary equipment (*e.g.*, car chargers, emergency chargers, etc.)
  i. Manufacturer suggested retail price (MSRP) for each piece of auxiliary equipment
l. MSRP without optional features, accessories or service plans
m. Manufacturer's estimated lifetime of the device
n. Other information or notes that are relevant to the system/device

3. Product Information—Software for Video Data Storage and Management

a. Data Management
  i. Searching capabilities
  ii. Categorizing capabilities (*e.g.*, by law enforcement officer, location, incident, etc.)
  iii. Tagging capabilities (*i.e.*, a feature that allows users to add additional metadata, such as case number and case notes)
  iv. Archiving and file retention capacity
  v. Data saved on or offsite (*e.g.*, cloud storage)
    1. If saved offsite, specify data accessibility and storage costs
    2. Video data storage capacity local vs. cloud
    3. Capability to accommodate multiple site installations
  vi. Export capabilities
    1. If yes, whether there is a traceability feature that shows which user exported the data
  vii. Redacting/editing capabilities
    1. If redacted/edited, specify whether changes are permanent
  viii. Support provided for chain-of-custody requirements
  ix. Scalability for different organization size
  x. User management and role-based access levels
b. Video Analytics
  i. Whether there is companion software to analyze the video and audio data recorded by the BWCs
  ii. Types of reports that are built into the software
    1. Standard reports (*e.g.*, distribution of number of hours of recording per officer in a given period)
    2. Daily reports, historical reports, etc.
    3. Audit reports that support chain-of-custody requirements
    4. Customization of reports
  iii. Facial recognition capabilities
  iv. Weapons detection capabilities
  v. Other analytical capabilities not mentioned above
c. Video Security and Authentication
  i. Compatibility of the BWC video outputs with existing video management software for viewing and recording
  ii. File integrity checks to ensure authenticity
  iii. Data protection mechanism while in transit and during storage (*e.g.*, SSL, encryption, password strength, etc.)
  iv. Routine software updates, approximate frequency, and how it is updated (*e.g.*, manual or automatic)
  v. Cost of software updates

4. Usability/Training

a. Types of processes used to ensure usability of hardware and software products (*e.g.*, requirements gathering, observation, task analysis, interaction design, usability testing, ergonomics, interoperability, etc.)
b. Types of data gathered from the user community (*e.g.*, interviews, observations during hands-on training, survey, satisfaction surveys, repeat customers, etc.) to evaluate your products, and how often it is collected
c. Types of user-group meetings and frequency of their occurrence (*e.g.*, dedicated face-to-face hosted meetings, in conjunction with established meetings such as those of the Body Work Video Steering Group and the Metropolitan Washington Council of Governments Police Technology Subcommittee, etc., interactive webinars).
d. Categories of problems reported to the vendor and estimated percentage of user community that experienced them within the last three (3) years
i. Resolution(s) to the problems identified above
e. Hours of technology support provided and location (*e.g.*, telephone, web-based, or on site at agency), including any additional costs beyond the license/purchase
f. Hours and type of training provided (*e.g.*, on-site, web-based, pre-recorded, play environment etc.)

5. Installation

a. Average time to install the complete BWC system and activate the first BWC device (in minutes, hours, or days)

Nancy Rodriguez,
Director, National Institute of Justice.

[FR Doc. 2016–09958 Filed 4–27–16; 8:45 am]
BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Exemptions From Certain Prohibited Transaction Restrictions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following proposed exemptions: D–11813, The Michael T. Sewell, M.D., P.S.C. Profit Sharing Plan (the Plan); D–11822, Plumbers' Pension Fund, Local 130, U.A. (the Plan or the Applicant); D–11858, Liberty Media 401(k) Savings Plan (the Plan); and, D–11866, Baxter International Inc. (Baxter or the Applicant).

DATES: All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice.

ADDRESSES: Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits

Security Administration (EBSA), Office of Exemption Determinations, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No.____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via email or FAX. Any such comments or requests should be sent either by email to: *moffitt.betty@dol.gov,* or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1515, 200 Constitution Avenue NW., Washington, DC 20210.

Warning: All comments will be made available to the public. Do not include any personally identifiable information (such as Social Security number, name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

SUPPLEMENTARY INFORMATION:

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).[1] Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

The Michael T. Sewell, M.D., P.S.C. Profit Sharing Plan (the Plan) Located in Bardstown, Kentucky

[Application No. D–11813]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011). If the exemption is granted, the restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975, by reason of section 4975(c)(1)(A), (D) and (E) of the Code,[2] shall not apply to the cash sale (the Sale) by the individually-directed account (the Account) in the Plan of Michael T. Sewell, M.D. (Dr. Sewell or the Applicant) of a parcel of unimproved real property (the Property), to Dr. Sewell, a party in interest with respect to the Plan; provided that:

(a) The Sale is a one-time transaction for cash;

(b) The sales price for the Property is the greater of: $916,501; or the sum of the fair market value of the Property, as established by a qualified independent appraiser (the Appraiser), and the fair market value of timber on the Property, as determined by a qualified independent timber appraiser (the Forester), in separate, updated appraisal reports (the Appraisal Reports) on the date of the Sale;

(c) The Account pays no real estate fees or commissions in connection with the Sale;

(d) The terms of the Sale are no less favorable to the Account than the terms the Account would receive under similar circumstances in an arm's length transaction with an unrelated party; and

(e) Michael T. Sewell, M.D., P.S.C. (the Employer) bears 100% of the costs of obtaining this exemption, if granted.

Summary of Facts and Representations[3]

1. The Employer is an orthopedic medical practice that was formed by Dr. Sewell under Kentucky law on December 23, 1990. The Employer is located at 875 Pennsylvania Avenue in Bardstown, Kentucky.

2. The Plan is a defined contribution plan that allows participants to self-direct the investments of their individual accounts. Dr. Sewell is a 65 year old participant in the Plan and he is also the Plan trustee. As of June 17, 2015, Dr. Sewell's Account in the Plan had total assets of approximately $916,501. Nearly all of the Account's assets is comprised of Property described herein.

3. In addressing the Account's lack of diversification, the Applicant represents that in November 2012, Dr. Sewell completed a partial distribution of his Account by rolling over $704,599.09 to an individual retirement account (the IRA). At that time, the Account still contained an illiquid investment in a real estate investment trust (REIT), in addition to the subject Property. Subsequently, the REIT was liquidated, and proceeds of $17,011.20 were rolled over into the IRA.

Prior to the rollover, the Applicant represents that Dr. Sewell's Account was diversified. Over time, due to the substantial increase in the value of the Property and the timber situated thereon, Dr. Sewell's Account became heavily concentrated in the Property.

4. On February 27, 1996, the Account purchased the Property, consisting of 277.15 acres of rural farmland, from Mr. Edgar M. Deats and Mrs. Frances E. Deats, who are unrelated parties, for a total cash purchase price of $279,997.80, that includes $4,997.80 in closing expenses. The Property, is located on Deatsville Road in Coxs Creek, Kentucky, and is legally described as "DB 327 PG 678 PC 2 SLOT 265 Nelson Co." The Property was purchased by Dr. Sewell's Account for capital appreciation and it adjoins a farm that is owned by Dr. Sewell. Approximately 19% of the Property is grassland and 81% timberland.

5. Since the time of acquisition by the Account, the Property has not been used by or leased to anyone. Aside from the Property's total acquisition price of $279,997.80, the Account has paid property taxes totaling $9,093.66 (or approximately $454 per year); appraisal fees of $5,950; $802.11 for liability

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[1] The Department has considered exemption applications received prior to December 27, 2011 under the exemption procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

[2] For purposes of this proposed exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[3] The Summary of Facts and Representations is based on the Applicant's representations and does not reflect the views of the Department, unless indicated otherwise.

insurance; and $4,207.50 for legal and related fees. Thus, the aggregate cost of acquiring and holding the Property by the Account was $300,051.07 ($279,997.80 + $20,053.27), as of November 10, 2015.

6. The Applicant is requesting an individual exemption from the Department to allow Dr. Sewell to purchase the Property from his Account. In this regard, the Applicant states that: (a) It would be difficult for Dr. Sewell to make distributions from his Account upon reaching age 70½ if the Account continues to hold the Property; (b) if Dr. Sewell decides to terminate the Plan, the tax laws would not permit the rollover of the Property into an individual retirement account; and (c) the value of the grassland portion of the Property, some of which could be used to grow corn, soybeans, and wheat, has stagnated.

The proposed Sale will be a one-time transaction for cash, for the greater of: $916,501; or the sum of the fair market value of the Property, as established by the Appraiser, and the fair market value of the merchantable timber located on the Property, as determined by the Forester, in separate, updated Appraisal Reports on the date of the Sale. In addition, the terms of the proposed Sale will be at least as favorable to the Account as those obtainable in an arm's length transaction with an unrelated party. Further, the Account will pay no real estate commission, costs, or other expenses in connection with the proposed Sale, and the Employer will pay 100% of the costs of obtaining this exemption, if granted. Finally, the Sale will not be part of an agreement, arrangement or understanding designed to benefit Dr. Sewell or the Employer.

7. Section 406(a)(1)(A) and (D) of the Act states that a fiduciary with respect to a plan shall not cause a plan to engage in a transaction if he knows or should know that such transaction constitutes a direct or indirect sale or exchange of any property between the Plan and a party in interest, or a transfer to, or use by or for the benefit of, a party in interest, of any assets of the Plan is also a prohibited transaction. The term party in interest is defined by section 3(14) of the Act to include any fiduciary. Dr. Sewell is a party in interest under section 3(14)(A) of the Act as a fiduciary with respect to the Plan because he is the Plan trustee. Therefore, the Sale of the Property by the Account to Dr. Sewell would violate section 406(a)(1)(A) and (D) of the Act.

In addition, section 406(b)(1) of the Act prohibits a plan fiduciary from dealing with the assets of the plan in his own interest or for his own account. Moreover, section 406(b)(2) of the Act prohibits a plan fiduciary, in his individual or in any other capacity, from acting in any transaction involving the plan on behalf of a party whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries.

The sale represents a violation of section 406(b)(1) of the Act since Dr. Sewell would be causing his Account to sell the Property to himself. In addition, the sale represents a violation of section 406(b)(2) of the Act since Dr. Sewell would be acting on both sides of the transaction.

8. Mr. Roger F. Leggett of Bardstown, Kentucky, has been appointed by Dr. Sewell to serve as the Appraiser and, in such capacity, to prepare the Appraisal Report of the Property. The Appraiser, a Certified General Appraiser, has been licensed in the State of Kentucky since 1994. The Appraiser represents that he has performed appraisal work in Kentucky for more than 45 years, of which he spent more than 25 years working for the U.S. Department of Agriculture where he completed in-house appraisals of farms, rural residences and chattels. The Appraiser states that the gross revenues he received from parties in interest with respect to the Plan, including the preparation of the Appraisal Report, represented approximately 1.8% of his actual gross revenues in 2014.

9. In an Appraisal Report dated October 22, 2014, the Appraiser describes the Property as a 277.15 acre tract of rural farmland with a barn situated thereon, located in the northwest section of Nelson County, Kentucky. The Appraiser notes that the Property has level to moderately sloping terrain, consisting of grassland and woodland, with little marketable timber.

The Appraiser has used the Sales Comparison Approach to value the Property. The Appraiser states that he could not use the Income Approach to valuation because there are no crops or income produced by the Property. The Appraiser also explains that the Cost Approach could not be used to value the Property because there are no improvements to the site.

The Appraiser represents that the Sales Comparison Approach is the most reliable because there were real estate sales available for comparison. In this regard, the Appraiser states that he reviewed public records, Multiple Listing Service data, and obtained information from other real estate agents and land owners. Based on the Sales Comparison Approach, the Appraiser has placed the fair market value of the Property at $831,450, as of October 22, 2014.

The Appraiser is also of the view that the Property does not have any assemblage value. The Appraiser explains that assemblage value is where an adjoining property is purchased to enhance the value of the present property. According to the Appraiser, this factor works mainly in commercial or industrial property where one may need to adjoin land for a parking lot or to be able to make the building larger. The Appraiser represents that it has been his experience that assemblage value is not typically the case with farmland because, generally, as a tract of farmland increases in size, the per acre value decreases. The Appraiser also states that this has been demonstrated repeatedly in local auctions, where land almost always sells for more per acre in smaller tracts, as opposed to larger tracts, and there usually are more buyers for smaller tracts than for larger tracts.

In an addendum to the Appraisal Report dated November 11, 2015, the Appraiser states that fair market value of the Property has not changed since the 2014 valuation.

10. Mr. Steve Gray of Radcliff, Kentucky has been retained by Dr. Sewell, on behalf of the Account, to prepare a report of the estimated value of the timber that is located on the Property because the Appraiser disclaimed having knowledge of timber values. The Forester is a Certified Natural Resource Conservation Service-Technical Service Provider, and is licensed in the State of Kentucky. The Forester, who is a member of the Association of Consulting Foresters and the Society of American Foresters, represents that he has over thirty years' experience as a Service Forester and Forestry Supervisor with the Kentucky Division of Forestry. The Forester further represents that he has no pre-existing relationship with Dr. Sewell.

The Forester represents that he conducted a forest inventory of the Property on September 22, 2015, using "78 ten factor prism plots" systematically placed throughout the forested parts of the Property. At each plot location, the Forester explains that trees 12 inches in diameter at breast height (dbh) were recorded by species, dbh, and merchantable height. The Forester also represents that plot data indicated an average of 33 merchantable trees per acre, yielding an average volume per acre of 3,316 board feet (bd. ft.). The Forester further explains that 232 acres of the Property would be classified as forest, which when considering the 3,616 bd. ft. per acre, would yield a total estimated value of 739,480 bd. ft.

The Forester notes that the Property lies in an area with little forest industry. The Forester explains that harvested forest products must be transported at least 50 miles to saw mills that offer competitive prices for these products. The Forester states that transportation distance not only affects the value of the standing timber, but also the amount of timber per acre required to make a timber harvest economically feasible.

The Forester represents that based on his experience, approximately 1,700 bd. ft. per acre is required to make a timber harvest economically feasible in the area of the Property. Moreover, the Forester explains, comparable properties in the area would likely have up to 1,700 bd. ft. per acre without any additional timber value being considered in the Property sale. Subtracting 1,700 bd. ft. per acre from the average of 3,316 bd. ft. per acre on the Property, the Forester states that this leaves 1,616 bd. ft. to be considered as additional value that is above the valuation in the Property Appraisal Report.

According to the Forester, the Property contains 232 acres of forest with an estimated 1,616 bd. ft. acre, for a total volume of 374,912 bd. ft. The Forester explains that the total volume was apportioned to various species of trees, resulting in a fair market value for the timber of $85,051 as of October 3, 2015.

Thus, based on the $831,450 fair market value of the Property, as determined by the Appraiser, and the $85,051 fair market value of the timber, as determined by the Forester, the aggregate fair market value of the Property is $916,501. Both the Appraiser and the Forester will update their respective Appraisal Reports on the date of the Sale.

11. The Applicant represents that the proposed transaction is administratively feasible because the Sale will be a one-time transaction for cash. The Applicant also represents that the proposed transaction is in the interest of the Account because the Sale will not cause the Account to incur any expenses, real estate commissions, or other fees. Further, the Applicant explains that the Sale will yield a profit to the Account that is attributable to the Property's appreciation.

In addition, the Applicant represents that the proposed transaction is protective of the rights of Dr. Sewell, as a Plan participant, because the Sale will allow him to reinvest the proceeds from the Sale in other investments that are more liquid and have a greater chance of capital appreciation, without recurring expenses.

The Applicant also represents that if the proposed exemption is not granted, the Account will experience a hardship or economic loss because Dr. Sewell is approaching retirement age, and his Account will not be able to satisfy the Internal Revenue Service's required minimum distribution requirements due to the lack of divisibility of the Property. Finally, the Applicant represents that the Sale is not part of an agreement, arrangement or understanding designed to benefit Dr. Sewell.

12. In summary, the Applicant represents that the proposed transaction will satisfy the statutory criteria for an exemption as set forth in section 408(a) of the Act for the following reasons:

(a) The Sale will be a one-time transaction for cash;

(b) The sales price for the Property will be the greater of: $916,501; or the sum of the fair market value of the Property, as established by the Appraiser, and the fair market value of the timber, as determined by the Forester, in separate, updated Appraisal Reports on the date of the Sale;

(c) The Account will pay no real estate fees or commissions in connection with the Sale;

(d) The terms of the Sale will be no less favorable to the Account than the terms the Account would receive under similar circumstances in an arm's length transaction with an unrelated party; and

(e) The Employer will bear 100% of the costs of obtaining this exemption, if granted.

Notice to Interested Persons

Because Dr. Sewell is the sole person in the Plan whose Account is affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption (the Notice) to interested persons. Therefore, comments and requests for a hearing are due thirty (30) days after publication of the Notice in the **Federal Register**.

All comments will be made available to the public.

Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT: Mrs. Blessed Chuksorji-Keefe of the Department, telephone (202) 693–8567. (This is not a toll-free number.)

Plumbers' Pension Fund, Local 130, U.A. (the Plan, or the Applicant) Located in Chicago, IL

[Application No. D–11822]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 46637, 66644, October 27, 2011).[4] If the exemption is granted, the restrictions of sections 406(a)(1)(A) and 406(a)(1)(D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) and (D) of the Code, shall not apply to the sale (the Sale) of two commercial buildings (the Properties), by the Plan to the Plumbers' Pension Fund, Local 130, U.A. (the Union), a party in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) The Sale is a one-time transaction for cash;

(b) The price paid by the Union to the Plan is equal to the greater of: (1) $1,640,000, or (2) the fair market value of the Properties, as determined by a qualified independent appraiser (the Independent Appraiser) as of the date of the Sale;

(c) The Plan does not pay any appraisal fees, real estate fees, commissions, costs or other expenses in connection with the Sale;

(d) The Plan trustees appointed by the Union (the Union Trustees) recuse themselves from: (1) Discussions and voting with respect to the Plan's decision to enter into the Sale; and (2) all aspects of the selection and engagement of the Independent Appraiser for the purposes of determining the fair market value of the Properties on the date of the Sale;

(e) The Plan trustees appointed by the employer associations (the Employer Trustees), who have no interest in the Sale: (1) Determine, among other things, whether it is in the interest of the Plan to proceed with the Sale; (2) review and approve the methodology used by the Independent Appraiser in the independent appraisal report (the Appraisal Report) that is being relied upon; and (3) ensure that such methodology is applied by the Independent Appraiser in determining the fair market value of the Properties on the date of the Sale; and

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[4] For purposes of this proposed exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

(f) The Sale is not part of an agreement, arrangement, or understanding designed to benefit the Union.

Summary of Facts and Representations[5]

1. *The Plan.* The Plan is a multi-employer defined benefit plan which was established on June 1, 1953, pursuant to a collective bargaining agreement between various contractor associations (the Employer Associations) and the Union (the CBA). Pursuant to the CBA, the Employer Associations are required to make monthly contributions to the Plan on behalf of their members at a specified amount based upon hours worked. As of September 30, 2015, the Plan covered 9,169 participants and held $931,622,990 in total assets.

The Plan is administered by a ten member Board of Trustees (the Trustees), consisting of five Employer Trustees and five Union Trustees. The Trustees have ultimate fiduciary, operational, and investment discretion over the Plan's assets, and have entered into an agreement for The Northern Trust Company to act as Master Trustee and Custodian for the Plan.

2. *The Properties.* Included among the assets of the Plan are the Properties, which are located at 1330–1332 and 1336 West Washington Boulevard, Chicago, Illinois. The Properties were originally purchased by the Plan on November 30, 2000, from an unrelated party for a total purchase price of $1,365,000. The Plan did not finance the purchase of either Property and neither is currently encumbered by a mortgage.

The building located at 1330–1332 West Washington Boulevard (the 1330–1332 Building) was constructed in 1939 and consists of a single warehouse and industrial space that covers 9,600 square feet. As represented by the Applicant, the 1330–1332 Building is specifically suited to accommodate printing operations and, as constructed, is unsuitable for use as an office space. Since its acquisition by the Plan, the 1330–1332 Building has not been leased to, or used by, a party in interest to the Plan. The 1330–1332 Building, which is currently vacant, was formerly leased by the Plan to an unrelated party. The Building located at 1336 West Washington Boulevard (the 1336 Building) was constructed in 1926 and consists of 6,500 square feet of office and storage space.

3. *Lease of the 1336 Building.* Effective October 1, 2002, the Trustees entered into an agreement to lease office space in the 1336 Building to the Union for a term of eight years (the 1336 Building Lease). Pursuant to its terms, the 1336 Building Lease requires the Union to pay to the Plan an annual base rental amount of $51,620, payable in equal monthly installments of $4,301.67. As represented by the Applicant, and as reflected in the relevant Trustee meeting minutes, the Union Trustees recused themselves from the decision-making process regarding the 1336 Building Lease.

Since the initial execution, the Plan and Union have agreed to two amendments to the 1336 Building Lease. First, on December 11, 2002, the Plan and Union executed an amendment to provide for semi-annual rent adjustments based upon the Consumer Price Index (CPI). Second, on October 1, 2010, the Plan and Union executed a Lease Modification and Extension Agreement (the 1336 Building Lease Extension) which: (a) Extended the term of the 1336 Building Lease for an additional 8 years, expiring September 30, 2018; and (b) raised the base monthly rent amount to $5,192, with provisions for future CPI adjustments to the rent. As documented in the relevant Trustee meeting minutes, the Union Trustees recused themselves from the decision-making process regarding the 1336 Building Lease Extension. Current monthly rent under the 1336 Building Lease is $5,492.

With respect to the 1336 Building Lease, the Applicant is relying upon Prohibited Transaction Exemption (PTE) 76–1 (41 FR 12740, March 26, 1976, as corrected by 41 FR 16620, April 20, 1976), and PTE 77–10 (42 FR 33918, July 1, 1977). Part C of PTE 76–1 provides conditional exemptive relief from the prohibited transaction provisions of sections 406(a) and 407(a) of the Act for the leasing of office space by a multiple employer plan to a participating employee organization, participating employer, or another multiemployer plan. PTE 77–10, which complements PTE 76–1, provides conditional exemptive relief from the prohibited transaction provisions of section 406(b)(2) of the Act with respect to the leasing of office space by a multiple employer plan to a participating employee organization, participating employer, or another multiemployer plan. The Applicant represents that the 1336 Building Lease meets all of the required conditions under PTEs 76–1 and 77–10. The Department, however, expresses no opinion herein on whether the requirements of PTEs 76–1 and 77–10 have been met by the Applicant.

4. *Property-Related Expenses.* In connection with its ownership of the Properties, the Plan currently generates approximately $65,784 in rental income on an annual basis from the 1336 Building Lease. This income, however, is offset by recurring expenses on the Properties, which include real estate taxes, general maintenance costs, and utility costs. For the Plan year ending May 31, 2015, the Plan incurred expenses totaling $34,389.24 in connection with its ownership of the Properties. These incurred expenses included $13,780.75 in real estate taxes, $11,112.00 in insurance costs, and $9,505.49 in utility and maintenance costs.

5. *Attempt to Sell the 1330–1332 Building.* In August 2012, the Trustees agreed to pursue a sale of the 1330–1332 Building to an unrelated buyer. At the time, the Trustees had determined that the 1330–1332 Building had become a non-performing asset for the Plan. On August 1, 2012, the Trustees entered into an Exclusive Sale and Lease Agreement (the Sale and Lease Agreement) with Jameson Real Estate, LLC (Jameson), of Chicago, Illinois, an unrelated party with respect to the Plan. Pursuant to the Sale and Lease Agreement, the Trustees granted to Jameson the exclusive right to either: (a) Sell the 1330–1332 Building for an amount within the range of $75.00–$95.00 per square foot; or (b) lease the 1330–1332 Building to an unrelated party for a monthly amount within the range of $8.50–$10.00 per square foot. The Plan received no offers in connection with its efforts to sell or rent the 1330–1332 Building.

6. *Union's Offer to Purchase the Properties.* During the Trustees' March 14, 2013 meeting, Union Trustee, Ken Turnquist, informed the Trustees that the Union was interested in purchasing both of the Properties from the Plan, and that he was in the early stages of putting together a Letter of Intent to do so. The Union subsequently assessed an inspection report (the Inspection Report), which revealed that the Properties were in need of certain remedial masonry and environmental work. Specifically, the Inspection Report concluded that the 1336 Building required complete tuck-pointing of its North and West facing elevations and a rebuild of the six inch exterior veneer of its chimneys (the Masonry Repairs). Additionally, the Inspection Report concluded that environmental considerations warranted the removal of an obsolete underground

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[5] The Summary of Facts and Representations is based on the Applicant's representations and does not reflect the views of the Department, unless indicated otherwise.

oil tank from beneath the 1330–1332 Building (the Environmental Repairs).

Following receipt of the Inspection Report, the Union solicited and received multiple bids to complete the above-cited masonry and environmental repairs. With regard to the Masonry Repairs, the Union received a low bid of $174,421.00 (the Masonry Bid) from Grove Masonry Maintenance, Inc. of Alsip, Illinois, an unrelated party with respect to the Plan. With regard to the Environmental Repairs, the Union received a low bid of $39,500.00 (the Water Tank Removal Bid) from WM. J. Scown Building Company of Wheeling, Illinois, also an unrelated party with respect to the Plan.

7. During the Trustees' March 6, 2014 meeting, Mr. Turnquist presented the Trustees with three documents: (a) An offer from the Union to purchase the Properties for $1,416,000.00 (the March 2014 Offer); (b) an appraisal report completed by Charles G. Argianas and Robert S. Huth of the Industrial Appraisal Company, of Pittsburgh, Pennsylvania (the Independent Appraiser), valuing the Properties at $1,630,000.00 as of January 23, 2014 (the January 2014 Appraisal Report); and (c) the above-noted Masonry and Water Tank Removal Bids. Following recusal by the Union Trustees, the Employer Trustees proceeded to review and discuss the March 2014 Offer.

The Employer Trustees determined that it was in the best interest of the Plan and its participants and beneficiaries to sell the Properties at their fair market value. In this regard, the Employer Trustees determined that the Plan would not assume the Remediation Costs as an offset to the purchase price. On September 15, 2015, the Employer Trustees communicated to the Union that the Plan was seeking full fair market value of $1,640,000.00 for the Properties with no offset. The Union thereafter accepted the Employer Trustees' amended offer.

8. *Relevant Terms of the Sale.* As stated in the Purchase Agreement, the Union will deposit $50,000 into an escrow account held for the benefit of the Plan with an unrelated escrow agent. The remaining balance of $1,590,000 will be paid by the Union to the Plan at closing by cash, certified or cashier's check, or wire transfer. As also stated in the Purchase Agreement, the Plan will pay no real estate fees or commissions, or incur any other expenses or costs as a result of the Sale. In this regard, the Union will assume all closing costs associated with the Sale, including the city, county, and state transfer taxes that are associated with the transaction. Finally, the Plan will pay no fees to the Independent Appraiser in connection with the Sale.

9. *Legal Analysis.* The Applicant has requested an administrative exemption from the Department because the proposed Sale violates several provisions of the Act. Section 406(a)(1)(A) of the Act provides that a fiduciary with respect to a plan shall not cause a plan to engage in a transaction if the fiduciary knows or should know that such transaction constitutes a direct or indirect sale or exchange, or leasing, of any property between a plan and a party in interest. Further, section 406(a)(1)(D) of the Act provides that a fiduciary with respect to a plan shall not cause a plan to engage in a transaction if the fiduciary knows or should know that such transaction constitutes a direct or indirect transfer to, or use by or for the benefit of, a party in interest, of any assets of the plan.

Section 3(14)(D) of the Act defines the term "party in interest" to include an employee organization any of whose members are covered by such plan. Section 3(14)(A) of the Act defines the term "party in interest" to include any fiduciary of such plan. Thus, the Union, as an employee organization whose members are covered by the Plan, and the Trustees, as fiduciaries to the Plan, are parties in interest with respect to the Plan, pursuant to sections 3(14)(A) and 3(14)(D) of the Act, respectively. Accordingly, the Sale would constitute a violation of section 406(a)(1)(A) and (D) of the Act.

10. *The Qualified Independent Appraiser.* On November 2, 2012, Terry Musto, Fund Administrator to the Plan, engaged the Industrial Appraisal Company to render an opinion as to the fair market value of the Properties. As represented by the Applicant, Mr. Musto is neither a Union official nor a Union member. The Applicant further represents that Mr. Musto has been delegated the power and authority to engage service providers on behalf of the Plan.

As mentioned above, Charles C. Argianas and Robert S. Huth of the Industrial Appraisal Company completed the January 2014 Appraisal Report. Subsequently, on January 9, 2015, Mr. Argianas and Maksym Smolyak completed an updated appraisal report of the Properties, as of December 22, 2014 (the January 2015 Appraisal Report).[6]

Mr. Argianas is a Certified General Real Estate Appraiser in the State of Illinois (License #553.000164). He is also a member of the Appraisal Institute. Mr. Smolyak is an Associate Real Estate Trainee Appraiser, and has performed and assisted in real estate consulting and appraisal assignments involving various properties throughout Illinois, Indiana, and Wisconsin.

Messrs. Argianas and Smolyak have certified that they have "no present or prospective interest in the [P]roperty that is the subject of this report and no personal interest with respect to the parties involved," and that the fees derived from parties in interest are equal to less than 1/10th of 1% of Industrial Appraisal Company's revenues for 2014, from all sources, and that the Industrial Appraisal Company has never been engaged by the Union, or any other party in interest to the Plan. Messrs. Argianas and Smolyak have also acknowledged that they are aware that the Appraisal Reports are being used for the purposes of obtaining an individual exemption from the Department.

As represented in the Appraisal Reports, Messrs. Argianas and Smolyak performed the following underlying tasks to determine the Properties' value: (a) An analysis of regional, city, market area, site, and improvement data; (b) an inspection of the Properties and the immediate market area; and (c) a review of data regarding real estate taxes, zoning, and utilities.

In valuing the Properties, Messrs. Argianas and Smolyak considered all of the commonly-accepted approaches to property valuation, including the Cost Approach, Income Capitalization Approach and Sales Comparison Approach. After considering each of the three approaches separately, they determined that the Sales Comparison Approach warranted primary consideration in establishing market value for the Properties. Messrs. Argianas and Smolyak state that the Sales Comparison Approach is most reliable when there are a sufficient number of veritable sales and offerings that are representative of a subject property. In such a case, they explain, fewer adjustments increase the reliability of the ultimate valuation. With respect to the other valuation approaches, Messrs. Argianas and Smolyak accorded "due consideration" to the Income Capitalization Approach, and "little consideration" to the Cost Approach.

After inspecting the Properties and analyzing all relevant data, Messrs. Argianas and Smolyak determined the "AS–IS" Fee Simple Market Value of the Properties to be $1,430,000, as of December 22, 2014 in the January 2015 Appraisal Report. To arrive at their valuation conclusion for the Properties,

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[6] The January 2014 and the January 2015 Appraisal Reports are together referred to herein as the "Appraisal Reports."

Messrs. Argianas and Smolyak first assigned a full fair market value of $1,640,000 to the Properties' land, structure, and improvements. They then deducted $210,000 from that amount to account for the Remediation Costs.

The Employer Trustees and the Union have agreed to the purchase price of $1,640,000, which represents the full fair market value of the Properties with no offsets for the Remediation Costs or other costs. As a specific condition of this proposed exemption, the Independent Appraiser will reassess the fair market value of the Properties on the Sale date in an updated appraisal (the Updated Appraisal). With respect to the Updated Appraisal, the Employer Trustees will ensure that the Independent Appraiser's valuation methodology is properly applied in determining the fair market value of the Properties.

11. *Statutory Findings.* The Applicant represents that the proposed exemption is administratively feasible because it involves a one-time sale of the Properties for cash. As such, the proposed exemption will not require ongoing oversight by the Department. In addition, the Applicant represents that the proposed exemption is in the interest of the Plan and its participants and beneficiaries because the Sale will facilitate a more productive investment vehicle for the Plan. In this regard, the Applicant estimates that the proceeds from the Sale will generate annual income in excess of $100,000 for the Plan, going forward.

In addition, the Applicant represents that anticipated income to the Plan following the Sale will significantly exceed the income which the Plan would realize through a continued ownership of the Properties. The Applicant points out that the Plan currently generates approximately $65,000 in rental income on an annual basis as the owner of the Properties. This income, however, is offset by recurring expenses, which include real estate taxes, general upkeep and maintenance costs, and utility costs. The Applicant represents that an offset of these costs leaves the Plan with approximately $11,000 in annual net income as owner of the Properties.

13. *Summary.* In summary, it is represented that the proposed transaction satisfies or will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Sale will be a one-time transaction for cash.

(b) The price paid by the Union to the Plan will be equal to the greater of: (1) $1,640,000, or (2) the fair market value of the Properties, as determined by the Independent Appraiser as of the date of the Sale;

(c) The Plan will not pay any appraisal fees, real estate fees, commissions, costs or other expenses in connection with the Sale;

(d) The Union Trustees will recuse themselves from: (1) Discussions and voting with respect to the Plan's decision to enter into the Sale; and (2) all aspects of the selection and engagement of the Independent Appraiser for the purposes of determining the fair market value of the Properties on the date of the Sale;

(e) The Employer Trustees, who have no interest in the Sale: (1) Will determine, among other things, whether it is in the best interest of the Plan to proceed with the Sale of the Properties; (2) will review and approve the methodology used by the Independent Appraiser in the Appraisal Report that is being relied upon; and (3) will ensure that such methodology is applied by the Independent Appraiser in determining the fair market value of the Properties on the date of the Sale; and

(f) The Sale will not be part of an agreement, arrangement, or understanding designed to benefit the Union.

Notice to Interested Persons

The persons who may be interested in the publication in the **Federal Register** of the Notice of Proposed Exemption (the Notice) include all individuals who are participants in the Plan. It is represented that such interested persons will be notified of the publication of the Notice by first class mail to such interested person's last known address within fifteen (15) days of publication of the Notice in the **Federal Register**. Such mailing will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(b)(2), which will advise all interested persons of their right to comment on and/or to request a hearing. All written comments or hearing requests must be received by the Department from interested persons within 45 days of the publication of this proposed exemption in the **Federal Register**.

All comments will be made available to the public. *Warning:* Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Brennan of the Department at (202) 693–8456. (This is not a toll-free number.)

Liberty Media 401(k) Savings Plan (the Plan)

Located in Englewood, CO
[Application No. D–11858]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code) and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).[7]

Section I. Covered Transactions

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(E), 406(a)(2), and 407(a)(1)(A) of the Act shall not apply to: (1) The acquisition by the Plan of certain stock subscription rights (the Rights) to purchase shares of Liberty Broadband Series C common stock (LB Series C Stock), in connection with a rights offering (the Rights Offering) held by Liberty Broadband Corporation (Liberty Broadband), a party in interest with respect to the Plan; and (2) the holding of the Rights by the Plan during the subscription period of the Rights Offering, provided that the conditions described in Section II below have been met.

Section II. Conditions for Relief

(a) The Plan's acquisition of the Rights resulted solely from an independent corporate act of Liberty Broadband;

(b) All holders of Liberty Broadband Series A common stock and Liberty Broadband Series C common stock (collectively, the LB Stock), including the Plan, were issued the same proportionate number of Rights based on the number of shares of LB Stock held by each such shareholder;

(c) For purposes of the Rights Offering, all holders of LB Stock, including the Plan, were treated in a like manner;

(d) The acquisition of the Rights by the Plan was made in a manner that was consistent with provisions of the Plan for the individually-directed investment of participant accounts;

(e) The Liberty Media 401(k) Savings Plan Administrative Committee (the

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[7] For purposes of this proposed exemption, references to the provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

Committee) directed the Plan trustee to sell the Rights on the NASDAQ Global Select Market, in accordance with Plan provisions that precluded the Plan from acquiring additional shares of LB Stock;

(f) The Committee did not exercise any discretion with respect to the acquisition and holding of the Rights; and

(g) The Plan did not pay any fees or commissions in connection with the acquisition or holding of the Rights, and did not pay any commissions to Liberty Broadband, Liberty Media Corporation, TruePosition, Inc., or any affiliates of the foregoing in connection with the sale of the Rights.

Effective Date: The proposed exemption, if granted, will be effective from December 15, 2014, the date that the Plan received the Rights, until December 17, 2014, the date the Rights were sold by the Plan on the NASDAQ Global Select Market.

Summary of Facts and Representations[8]

Background

1. Liberty Media Corporation (Liberty Media) is a Delaware corporation with its principal place of business in Englewood, Colorado. Liberty Media is a publicly traded corporation primarily engaged in media, communications and entertainment operating businesses through several subsidiaries, including Liberty Broadband Corporation (Liberty Broadband). Liberty Broadband holds ownership interests in Charter Communications, Inc. (Charter Communications), TruePosition, Inc. (TruePosition), and a minority equity investment in Time Warner Cable, among other debt and equity assets.

2. Liberty Media sponsors and maintains the Liberty Media 401(k) Savings Plan (the Plan). The assets of the Plan are held in the Liberty Media 401(k) Savings Plan Trust (the Trust). The Plan and Trust were created for the exclusive benefit of employee-participants and their beneficiaries. Liberty Media represents that the Plan is intended to qualify under sections 401(a) and 401(k) of the Code, and the Trust is intended to be exempt under Section 501(a) of the Code.

The Plan allows participants to direct the investment of their entire Plan accounts into any of 22 investment alternatives, including certain employer securities issued by Liberty Media such as Liberty Media's Series A and Series C common stock, as well as employer securities issued by other participating employers in the Plan. The Liberty Media 401(k) Savings Plan Administrative Committee (the Committee) is appointed by the board of directors of Liberty Media and has investment discretion over the Plan's investments, except to the extent that the participants can direct the investment of their Plan accounts. The trustee of the Plan (the Trustee) is Fidelity Management Trust Company (Fidelity). The Trustee acts as custodian of Plan assets, holding legal title to Plan assets, and executing investment directions in accordance with the participants' written instructions.

The Spin-Off of Liberty Broadband

3. On November 4, 2014, Liberty Media engaged in a spin-off (the Spin-Off) of its subsidiary, Liberty Broadband. Liberty Media notes that, at the time of the Spin-Off, Liberty Broadband owned a 100% ownership interest in TruePosition, and certain other equity and debt interests.

4. According to Liberty Media, for every share of Liberty Media's Series A common stock held by a shareholder, including the Plan, as of 5:00 p.m., New York City time, on October 29, 2014, the shareholder received one quarter (1/4) of a share of Liberty Broadband's Series A common stock (LB Series A Stock), with cash issued in lieu of fractional shares. Furthermore, for every share of Liberty Media's Series C common stock held by a shareholder, including the Plan, as of 5:00 p.m., New York City time, on October 29, 2014, the shareholder received one quarter (1/4) of a share of Liberty Broadband's Series C common stock (LB Series C Stock), with cash issued in lieu of fractional shares. Liberty Media explains that the shares of LB Series A Stock and LB Series C Stock (collectively, the LB Stock) were distributed as of 5:00 p.m., New York City time, on November 4, 2014 (the Spin-Off Date). Liberty Media notes that Liberty Broadband continued to own its interests in TruePosition, among its other interests, following the Spin-Off Date.

5. According to Liberty Media, the LB Stock received by the Plan as a result of the Spin-Off was allocated to the Plan participants' accounts in the same proportion as the shares were distributed in the Spin-Off. However, Liberty Media explains that, effective as of the Spin-Off Date, both the Plan and Trust were amended so as to preclude additional investments in LB Stock. As such, Liberty Media explains, the Plan was frozen to additional investments in LB Stock as of the Spin-Off Date. Plan participants holding the LB Stock received in the Spin-Off in their accounts could then elect to sell or transfer out the LB Stock held in their Plan accounts at any time.

6. Liberty Media explains that TruePosition, a participating employer with respect to the Plan prior to the Spin-Off, had considered establishing a new 401(k) plan for its employees that would be available for those employees immediately upon the Spin-Off. However, it was unable to do so within the ten-day timeframe prior to the Spin-Off Date. At the same time, TruePosition did not want its employees to be without a 401(k) plan to contribute to during this period. As such, Liberty Media allowed TruePosition to continue to participate in the Plan for the remainder of 2014. Liberty Media represents that TruePosition employees no longer participate in the Plan.

The Rights Offering

7. Liberty Media represents that, on December 10, 2014, Liberty Broadband initiated a rights offering (the Rights Offering) and issued subscription rights (individually, a Right, and collectively, the Rights) to purchase shares of LB Series C Stock to holders of the LB Stock, including the Plan, as of 5:00 p.m., New York City time, on December 4, 2014 (the Record Date). In a Form S–1 filed with the SEC on October 16, 2014, Liberty Broadband stated that it conducted the Rights Offering to raise capital for general corporate purposes. According to Liberty Media, under the terms of the Rights Offering, one Right was issued for every five shares of LB Stock held by the shareholder, including the Plan. Once received, each Right gave the respective shareholder the right to purchase one share of LB Series C Stock at a 20% discount to the 20-trading day volume weighted average price of the LB Series C Stock following the Spin-Off Date.

According to Liberty Media, the Rights could be exercised or sold during the period of the Rights Offering, which ran from December 11, 2014 through January 9, 2015. Liberty Media notes that the Rights began trading on the Nasdaq Global Select Market (the NASDAQ) on a when-issued basis on December 10, 2014, and began fully trading on December 11, 2014, under the symbol "LBRKR." During the Rights Offering period, the Rights traded at an average daily volume of 254,232 Rights/day and at a total cumulative trading volume of 5,338,866 Rights.

According to Liberty Media, the Plan held 287,143.473 shares of LB Stock as of the Record Date. As such, Liberty Media states that the Plan received 57,428.641 Rights in connection with the Rights Offering.

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[8] The Summary of Facts and Representations is based on Liberty Media's representations and does not reflect the views of the Department, unless indicated otherwise.

8. Liberty Media represents that, because of the restrictions placed on the Plan's ability to invest in LB Stock described above, Plan participants could not exercise Rights for their Plan accounts. Liberty Media states that, because the exercise of the Rights received in the Rights Offering was not permitted, the Committee directed the Trustee to sell the Rights received by the Plan, in accordance with its instructions.

9. According to Liberty Media, the Trustee received the Rights on behalf of the Plan on December 15, 2014. Liberty Media represents that the Plan established a separate temporary investment fund to receive and hold the Rights (the Rights Fund) pending the disposition of the Rights by the Trustee. Liberty Media notes that the Trustee acted as custodian of the Rights held in the Rights Fund. Liberty Media explains that the Rights were credited to participants' Plan accounts based on their respective holdings of LB Stock.

10. Liberty Media represents that the Trustee sold the Plan's Rights on the NASDAQ at market value on December 17, 2014, and the settlement from the sale of such Rights was completed by December 22, 2014. Liberty Media explains that, during the period that the Rights were traded on the NASDAQ from December 10, 2014 through January 9, 2015), the Rights sold for prices between $6.64 and $11.82 per Right. Liberty Media represents that the Plan received an average price of $7.6323 per Right for the sale of the Rights on the NASDAQ, for a total of $438,312.65.

11. According to Liberty Media, the Committee did not exercise any discretion with respect to the acquisition and holding of the Rights, because the Rights were unilaterally issued by Liberty Broadband to all holders of the LB Stock, including the Plan, without any action on the part of any stockholder. Liberty Media explains that, because the exercise of the Rights to purchase additional LB Series C Stock was not permitted, due to the fact that new investments in the Shares were not permitted under the Plan, the Committee directed the Trustee to sell the Rights.

12. Liberty Media represents that the Plan did not pay any fees or commissions in connection with the acquisition and holding of the Rights. Liberty Media notes that the Plan paid a commission rate of 2.9 cents per Right to Fidelity Brokerage Services LLC (Fidelity Brokerage), an affiliate of Fidelity, the Trustee, in connection with the sale of the Rights.[9] Liberty Media explains that the commissions were paid out of the Plan's forfeiture accounts.

Exemptive Relief Requested

13. Liberty Media represents that the acquisition and holding by the Plan of the Rights constitute prohibited transactions in violation of sections 406(a)(1)(E), 406(a)(2), and 407(a)(1)(A) of the Act. Section 406(a)(1)(E) of the Act provides that a fiduciary with respect to a plan shall not cause the plan to engage in a transaction if he or she knows or should know that such transaction constitutes the acquisition, on behalf of the plan, of any employer security in violation of section 407(a) of the Act. Section 406(a)(2) of the Act provides that a fiduciary of a plan shall not permit the plan to hold any employer security if he or she knows or should know that holding such security violates section 407(a) of the Act. Under section 407(a)(1)(A) of the Act, a plan may not acquire or hold any "employer security" which is not a "qualifying employer security." Under section 407(d)(1) of the Act, "employer securities" are defined, in relevant part, as securities issued by an employer of employees covered by the plan, or by an affiliate of such employer. Section 407(d)(5) of the Act provides, in relevant part, that "qualifying employer securities" are stock or marketable debt obligations.

Liberty Media states that the Rights constitute "employer securities" under section 407(d)(1) of the Act because the employees of TruePosition, an affiliate of Liberty Broadband, participated in the Plan at the time of the Rights Offering. Therefore, because the Rights were issued by an affiliate of TruePosition, which was an employer of employees covered by the Plan at the time of the Rights Offering, the Rights constituted employer securities. Liberty Media states further that, since the Rights did not constitute stock or marketable debt securities, they were not qualifying employer securities. Therefore, Liberty Media requests a retroactive exemption from sections 406(a)(1)(E), 406(a)(2), and 407(a)(1)(A) of the Act for the acquisition and holding of the Rights in connection with the Rights Offering.

14. As explained above, Liberty Media represents that the acquisition of the Rights has been completed. Liberty Media represents that no Plan accounts currently hold any Rights. Liberty Media notes that the Rights were sold by the Plan on the NASDAQ and that no Rights were exercised while in the Plan accounts. Liberty Media seeks retroactive relief effective from December 15, 2014, the date that the Plan received the Rights, until December 17, 2014, the date the Rights were sold on the NASDAQ.

Statutory Findings

15. Liberty Media represents that the proposed exemption is administratively feasible. Liberty Media represents that all shareholders, including the Plan, were treated in a like manner with respect to the acquisition and holding of the Rights. Furthermore, Liberty Media notes that the Rights were distributed to all shareholders of LB Stock, and upon receipt of the Rights by the Plan, they were placed in the Rights Fund. Thereafter, because the Plan was not permitted to acquire additional LB Stock, the Committee directed the Trustee to sell all of the Rights on the NASDAQ in accordance with their instructions. As such, Liberty Media represents that there is no reason for any continuing Departmental oversight.

16. Liberty Media represents that an exemption for the Plan's acquisition and holding of the Rights through its participation in the Rights Offering is in the interests of the Plan and its participants and beneficiaries because it allowed participants and beneficiaries to benefit from the sale of the Rights at no cost to the Plan, with the exception of a commission paid in connection with the sale of the Rights.

In this regard, the Rights were credited to participants' Plan accounts based on their respective holdings of Shares, and the proportionate cash proceeds from the sale of the Rights were placed in each respective account.

17. Liberty Media represents that an exemption for the acquisition and holding of the Rights in the Rights Offering is protective of the rights of participants and beneficiaries because the Rights were sold on the NASDAQ by the Trustee for their market value, in arms'-length transactions between unrelated parties. Furthermore, Liberty

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[9] Liberty Media explains that the parties are relying on the exemptive relief provided by section 408(b)(2) of the Act, relating to the provision by a party-in-interest to the Plan, and the payment therefor, of services necessary for the administration of the Plan, if no more than reasonable compensation is paid for such service. Liberty Media represents that the Plan Committee determined that Fidelity Brokerage was an appropriate provider of brokerage services in connection with the sale of the Rights on the NASDAQ and that the fees charged by Fidelity Brokerage for those services was reasonable. The Department is expressing no opinion herein as to whether the provision of services by Fidelity Brokerage to the Plan and the payment of commissions by the Plan to Fidelity Brokerage satisfy the requirements of section 408(b)(2) of the Act.

Media represents that the Plan did not pay any fees or commissions with respect to the acquisition or holding of the Rights, and it did not pay any commissions to any affiliate of Liberty Broadband, Liberty Media, or TruePosition with respect to the sale of the Rights.

Summary

18. In summary, Liberty Media represents that the proposed exemption satisfies the statutory criteria for an exemption under section 408(a) of the Act for the reasons stated above and for the following reasons:

a. The Plan's acquisition of the Rights resulted solely from an independent corporate act of Liberty Broadband;

b. All holders of LB Stock, including the Plan, were issued the same proportionate number of Rights based on the number of shares of LB Stock held by each such shareholder;

c. For purposes of the Rights Offering, all holders of LB stock, including the Plan, were treated in a like manner;

d. The acquisition of the Rights by the Plan was made in a manner that was consistent with provisions of the Plan for the individually-directed investment of participant accounts;

e. The Committee directed the Plan trustee to sell the Rights on the NASDAQ, in accordance with Plan provisions that precluded the Plan from acquiring additional shares of LB Stock;

f. The Committee did not exercise any discretion with respect to the acquisition and holding of the Rights; and

g. The Plan did not pay any fees or commissions in connection with the acquisition or holding of the Rights, and did not pay any commissions to Liberty Broadband, Liberty Media, TruePosition, or any affiliates of the foregoing in connection with the sale of the Rights.

Notice to Interested Persons

Notice of the proposed exemption will be given to all Interested Persons within 7 days of the publication of the notice of proposed exemption in the **Federal Register**, by first class U.S. mail to the last known address of all such individuals. Such notice will contain a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on the pending exemption. Written comments are due within 37 days of the publication of the notice of proposed exemption in the **Federal Register**.

All comments will be made available to the public.

Warning: If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT: Scott Ness of the Department, telephone (202) 693–8561. (This is not a toll-free number.)

Baxter International Inc. (Baxter or the Applicant) Located in Deerfield, IL

[Application No. D–11866]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended, (ERISA) and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).

Section I. Transaction

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A) and (D) and sections 406(b)(1) and (2) of ERISA and sections 4975(c)(1)(A), (D), and (E) of the Code shall not apply to the contribution of publicly traded common stock of Baxalta (the Contributed Stock) by Baxter (the Contribution) to the Baxter International Inc. and Subsidiaries Pension Plan (the Plan), provided:

(a) Fiduciary Counselors Inc. (the Independent Fiduciary) will represent the interests of the Plan, the participants, and beneficiaries with respect to the Contribution, including but not limited to, taking the following actions:

(i) Determining whether the Contribution is in the interests of the Plan and of its participants and beneficiaries, and is protective of the rights of participants and beneficiaries of the Plan;

(ii) Determining whether and on what terms the Contribution should be accepted by the Plan;

(iii) If the Contribution is accepted by the Plan, establishing and administering the process (subject to such modifications as the Independent Fiduciary may make from time to time) for liquidating the Contributed Stock, as is prudent under the circumstances;

(iv) Determining the fair market value of the Contributed Stock as of the date of the Contribution;

(v) Monitoring the Contribution and holding of Contributed Stock on a continuing basis and taking all appropriate actions necessary to safeguard the interests of the Plan; and

(vi) If the Contribution is accepted by the Plan, voting proxies and responding to tender offers with respect to the Contributed Stock held by the Plan;

(b) Solely for purposes of determining the Plan's minimum funding requirements (as determined under section 412 of the Code), adjusted funding target attainment percentage (AFTAP) (as determined under Treas. Reg. section 1.436–1(j)(1)), and funding target attainment percentage (as determined under section 430(d)(2) of the Code), the Plan's actuary (the Actuary) will not count as a contribution to the Plan any shares of Contributed Stock that have not been liquidated;

(c) For purposes of determining the amount of any Contribution, the Contributed Stock shall be deemed contributed only at the time it is sold, equal to the lesser of: (1) The proceeds from the sale of such Contributed Stock; or (2) the value of such Contributed Stock on the date of the initial contribution as determined by the Independent Fiduciary;

(d) The Contributed Stock represents no more than 20% of the fair market value of the total assets of the Plan at the time it is contributed to the Plan;

(e) The Plan pays no commissions, costs, or other expenses in connection with the Contribution, holding, or subsequent sale of the Contributed Stock, and any such expenses paid by Baxter will not be treated as a contribution to the Plan;

(f) Baxter makes cash contributions to the Plan to the extent that the cumulative proceeds from the sale of the Contributed Stock at each contribution due date (determined under section 303(j) of ERISA) are less than the cumulative cash contributions Baxter would have been required to make to the Plan, in the absence of the Contribution. Such cash contributions shall be made until all of the Contributed Stock is sold by the Plan; and

(g) Baxter contributes to the Plan cash amounts needed for the Plan to attain an AFTAP (determined under Treas. Reg. section 1.436–1(j)(1)) of at least 80% as of the first day of each plan year during which the Plan holds Contributed Stock, as determined by the Actuary, without taking into account any unsold Contributed Stock as of April 1 of the plan year.

Summary of Facts and Representations[10]

Background

1. Baxter International, Inc. (Baxter or the Applicant) is a Delaware corporation headquartered in Deerfield, Illinois, and does business throughout the world. Baxter was originally founded in 1931 as a manufacturer of intravenous (IV) solutions. Baxter's shares are publicly traded on the New York Stock Exchange (the NYSE). Prior to the spin-off transaction described below, Baxter had approximately 60,000 employees worldwide and two principal lines of business with manufacturing and research facilities in the United States, Belgium, Czech Republic, France, Germany, Ireland, Italy, Malta, Poland, Spain, Sweden, Switzerland, and the United Kingdom. The first business line involved the manufacture and sale of medical devices, primarily products used in the delivery of fluids and drugs to patients (the Medical Products Business). The second business line involved the manufacture and sale of products derived from blood plasma and other natural substances and used to treat bleeding disorders, immune deficiencies, and other conditions (the BioScience Business). In 2014, Baxter had net income of approximately $2.5 billion on net sales of approximately $16.7 billion, and as of December 31, 2014, its total shareholder's equity was in excess of $8.1 billion. Additionally, its debt is rated "investment grade" by the Standard & Poor's, Moody's, and Fitch rating services.

2. Baxalta Incorporated (Baxalta) is a Delaware corporation that was incorporated on September 8, 2014, as a wholly-owned subsidiary of Baxter. Baxter transferred the BioScience Business to Baxalta as part of the spin-off described below. For 2014, Baxalta's net sales were approximately $6.109 billion, and its net operating income was approximately $1.114 billion. As of March 31, 2015, Baxalta had total assets of approximately $11 billion. Baxalta has approximately 16,000 employees worldwide, with plants located in six countries.

3. The Plan is a defined benefit pension plan qualified under section 401(a) of the United States Internal Revenue Code of 1986, as amended (the Code) and sponsored and maintained by Baxter for the benefit of its employees located within the United States. As of May 1, 2015, there were a total of 30,836 participants and beneficiaries in the Plan. Baxter froze the Plan to new participants on December 31, 2006, and no person hired or re-hired, or transferred to a Baxter company in the United States after such date is eligible to participate in the Plan. Persons who were participants in the Plan on December 31, 2006, continue to accrue benefits under the Plan, except that Baxter gave participants who had fewer than five years of vesting service on December 31, 2006, an election between: (1) Continuing to accrue benefits under the Plan; or (2) receiving enhanced contributions to Baxter's defined contribution plan (*i.e.,* its 401(k) plan).

4. The Plan is funded by the Baxter International Inc. and Subsidiaries Pension Trust (the Trust), which was established pursuant to a trust agreement originally entered into July 1, 1986. The Plan's assets are invested under the direction of independent investment advisers, who are selected and overseen by Baxter's Investment Committee. As of June 30, 2015, the Plan had approximately $3.0 billion in total assets.[11]

5. Baxter's Administrative Committee is a committee comprised of employees of Baxter, which is appointed by the Compensation Committee of Baxter's Board of Directors. The Administrative Committee is responsible for the administration of Baxter's employee benefit plans, including the Plan, and is the designated "plan administrator" of the Plan for purposes of ERISA. The Investment Committee is also a committee comprised of employees of Baxter, but is appointed by Baxter's Board of Directors. The Investment Committee is responsible for directing the investment of the Plan's assets, including the selection and oversight of all investment managers and advisers for the Plan. The members of both the Administrative Committee and Investment Committee (together, the Committees) are named fiduciaries for purposes of ERISA with respect to the Plan. Both committees approved the proposed transaction of Contributed Stock and retention of Fiduciary Counselors, Inc. to act as the independent fiduciary for the Plan (the Independent Fiduciary).

6. The Plan's independent actuary, Towers Watson (the Actuary), determined that the Plan's adjusted funding target attainment percentage (AFTAP) as of January 1, 2014, was 104.3%, and the AFTAP as of January 1, 2015, was 107.16%. Baxter elected to apply its credit balance under the Plan to satisfy its minimum funding obligation for the 2014 plan year and was not required to make any cash contribution for that year. Baxter's minimum contribution obligation for 2015 was reduced to zero by the application of funding balances from prior years, and accordingly Baxter was not obligated to make (and did not make) any 2015 contribution. Under current projections, and excluding the proposed Contribution, Baxter states that it will not be required to make any cash contributions to the Plan until the 2019 plan year.

The Spin-Off

7. Baxter distributed approximately 80.5 percent of the common stock of Baxalta (the Baxalta Stock) to the shareholders of Baxter as a stock dividend (the Spin-Off) on July 1, 2015 (the Spin-Off Date). Each shareholder of Baxter received one share of Baxalta Stock for each share of Baxter stock owned on the record date for the Spin-Off. Furthermore, pursuant to a Separation and Distribution Agreement, dated June 30, 2015, between Baxter and Baxalta, Baxter transferred to Baxalta all of the assets that made up the BioScience Business, and Baxalta assumed the liabilities relating to the BioScience Business.

8. In connection with the Spin-Off, effective May 1, 2015, Baxalta established the Baxalata Incorporated and Subsidiaries Pension Plan (the Baxalta Plan), and the accrued benefits of all active participants in the Plan whose employment was transferred to Baxalta pursuant to the spin-off were transferred to the Baxalta Plan. The benefits of all terminated and retired participants were retained by the Plan, regardless of whether the participant was employed in the Medical Products Business or the BioScience Business.

9. In connection with the Spin-Off, but prior to the Spin-Off Date, Baxter caused a registration of the Baxalta Stock to be filed with the Securities and Exchange Commission, and caused the Baxalta Stock to be listed on the NYSE, so that immediately following the Spin-Off, Baxalta became a publicly traded stock, freely tradable on the NYSE. Baxter received a private letter ruling (the Private Letter Ruling) from the Internal Revenue Service covering certain federal income tax consequences

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[10] The Summary of Facts and Representations is based on the Applicant's representations and does not reflect the views of the Department, unless indicated otherwise.

[11] The number of participants and beneficiaries and the total Plan assets noted in this proposal represent totals after giving effect to the spin-off described below.

of the Spin-Off. According to the Applicant, the Private Letter Ruling provides that Baxter's use of the Baxalta Stock retained by Baxter (the Retained Stock) to satisfy such debts and obligations, including the proposed contribution of a portion of the Retained Stock to the Plan, will not result in the recognition by Baxter of taxable income, provided that the Retained Stock is used for such purpose within eighteen months following the Spin-Off Date.

The Contribution

10. Baxter states that the total value of all outstanding shares of Baxalta Stock (including the Retained Stock) as of July 2015 was approximately $20.3 billion, and the total value of the Retained Stock was approximately $4.0 billion, based upon a value of $30 per share. On the Spin-Off Date, the Retained Stock constituted approximately 19.5 percent of the total shares of Baxalta Stock. Baxter proposes to make an in-kind contribution (*i.e.*, a contribution other than cash) to the Plan of a portion of the Retained Stock (the Contributed Stock). Baxter represents that the Contributed Stock will have a market value, after any applicable liquidity discount, of not more than $750 million. The Applicant states further that based upon an assumed value of $30 per share, the number of shares of Contributed Stock will not be more than 25 million, which would represent approximately 18.95 percent of the Retained Stock and 4.4 percent of the total number of outstanding shares of Baxalta Stock (including the shares originally distributed as part of the Spin-Off and the Contributed Stock, but not the remaining shares of Retained Stock). The Applicant notes that, however, in no event will the value of the Contributed Stock exceed 20 percent of the total value of the Plan's assets immediately after Baxter contributes the Contributed Shares (the Contribution).

11. The Applicant represents that the Private Letter Ruling from the IRS specifically sanctions the contribution of the Contributed Stock on a tax-free basis, as long as the Contribution is completed within 18 months after the Spin-Off Date. As a result of the Private Letter Ruling, Baxter would save approximately $260 million in taxes if the Contributed Stock is contributed to the Plan. Baxter intends to pass this tax savings to the Plan in order to fund future benefits. Thus, Baxter states that an exemption for the in-kind contribution of the Contributed Stock will increase the assets available to the Plan by approximately $262.5 million.

12. Baxter states that the Baxalta Stock is listed on the NYSE, so that the Plan will be able to sell shares in open market transactions on the NYSE. Furthermore, according to Baxter, the shares of Contributed Stock will be considered "restricted shares" so that they can only be sold by the Plan in accordance with Rule 144 of the Securities and Exchange Commission.[12] However Baxter states that Rule 144's limitation on the maximum number of shares that may be sold by an affiliate within any three month period will not apply to the Plan. The Rule 144 requirement that the Plan hold the Contributed Stock for at least six months will apply, but Baxter expects to be able to consider its own holding time of the shares towards the Plan's six-month period, which was satisfied as of November 10, 2015. The Plan, however, would not be able to sell all of the Contributed Stock at one time without potentially depressing the market. Accordingly, the Independent Fiduciary has been tasked with selling the Contributed Stock on behalf of the Plan as quickly as is prudent and consistent with applicable laws.

Reasons the Proposed Transaction is Prohibited Under ERISA and the Code

13. Baxter represents that it is the employer—or the ultimate shareholder of the employer—of all of the employees covered by the Plan, and therefore a "party in interest" with respect to the Plan as defined in section 3(14)(C) and (E) of ERISA.[13] Section 406(a)(1)(A) of ERISA provides that a fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect sale or exchange, or leasing, of any property between the plan and a party in interest. The Applicant notes that in *Commissioner of Internal Revenue* v. *Keystone Consolidated Industries, Inc.*, 508 US 152 (1993), the United States Supreme Court held that a contribution of property to a plan, in satisfaction of the employer's minimum funding obligation, was a "sale or exchange" for purposes of section 406(a)(1)(A) of ERISA. The Applicant also notes that in Interpretive Bulletin 94–3(b), 29 CFR 2509.94–3(b), the Department concluded that any contribution of property to a defined benefit pension plan is a sale or exchange for purposes of section 406(a)(1)(A) of ERISA, even if the contribution is not used to satisfy a minimum funding obligation. Thus, the Applicant states that the Contribution will constitute a sale or exchange of the Contributed Stock between the Plan and a party in interest, and is prohibited under section 406(a)(1)(A) of ERISA.

14. In addition, section 406(a)(1)(D) of ERISA provides that a fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect transfer to, or use by or for the benefit of a party in interest, of any assets of the plan. The Applicant states that the use of the Contributed Stock to potentially reduce Baxter's funding obligation could be considered a use of the Contributed Stock after it has become a plan asset for Baxter's benefit.

15. Section 406(b)(1) of ERISA provides that a fiduciary with respect to a plan shall not deal with the assets of the plan in his own interest or for his own account, and section 406(b)(2) of ERISA provides that a fiduciary with respect to a plan shall not in his individual or in any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries. By causing the Plan to receive the Contribution, the members of the Committees and Baxter could be viewed as either dealing with the Plan's assets in their own interest or for their own account in violation of section 406(b)(1) of ERISA or as acting on behalf of Baxter in the Contribution, where Baxter's interests are adverse to those of the Plan, in violation of section 406(b)(2) of ERISA.

Independent Fiduciary

16. As described in more detail below, the Committees have retained Fiduciary Counselors Inc., the Independent Fiduciary, to represent the interests of the Plan with respect to the proposed transaction pursuant to an agreement dated May 11, 2015 (and which was subsequently updated on January 22, 2016). The Independent Fiduciary is an investment adviser registered under the Investment Advisers Act of 1940 that primarily acts as an independent fiduciary for employee benefit plans. Furthermore, Fiduciary Counselors states that it has served as an independent fiduciary for employee benefit plans since 2001. Fiduciary Counselors represents that they are highly qualified to serve as independent fiduciary in connection with the proposed transactions. The Independent Fiduciary was selected by the Committees based upon proposals

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[12] See 17 CFR 230.144.

[13] For purposes of this proposed exemption, references to Title I of ERISA, unless otherwise specified, refer also to the corresponding provisions of the Code.

submitted by the Independent Fiduciary and other candidates.

17. The Independent Fiduciary states that it is not related to or affiliated with any of the other parties to the transaction, and has not previously been retained to perform services with respect to the Plan or any other employee benefit plan sponsored by Baxter. Fiduciary Counselors represents and warrants that it is independent of and unrelated to Baxter and Baxalta, and that: (a) It does not directly or indirectly control, is not controlled by, and is not under common control with Baxter or Baxalta; (b) neither it, nor any of its officers, directors, or employees is an officer, director, partner, or employee of Baxter or Baxalta (or is a relative of such persons); (c) it does not directly or indirectly receive any consideration for its own account in connection with the Contribution or its services described hereunder, except that it may receive compensation from Baxter for performing the services described in this proposed exemption as long as the amount of such payment is not contingent upon or in any way affected by Fiduciary Counselor's ultimate decision; and (d) the percentage of Fiduciary Counselor's revenue that is derived from the Plan, any party in interest, or its affiliates involved in the proposed transactions is less than 5% of its previous year's annual revenue from all sources. Fiduciary Counselors represents that it understands and acknowledges its duties and responsibilities under ERISA in acting as an independent fiduciary on behalf of the Plan in connection with the covered transactions.

18. Fiduciary Counselors provided a preliminary report dated July 22, 2015 (the IF Report), that analyzed the proposed Contribution and described its responsibilities in connection therewith. In connection with the IF Report, the Independent Fiduciary considered the following key elements:

(a) Whether the Plan's Investment Policy would permit the Plan to hold the Contributed Stock as an acceptable investment. According to the IF Report, the Investment Committee approved the acceptance of the Contributed Stock as an employer contribution in the Plan, to be subsequently liquidated for cash. Therefore, the Independent Fiduciary determined that the Contributed Stock is an acceptable investment for the Plan and would be liquidated as soon as practicable and consistent with ERISA.

(b) Whether any liquidity discount would be applicable to the valuation of the Contributed Stock. The Independent Fiduciary retained Murray, Devine & Co., Inc. (Murray Devine) as an independent valuation adviser in order to assist with this determination.[14] The IF Report provides that the Contributed Stock could be liquidated in as few as 42 trading days, depending on the particular circumstances, assuming (i) Baxter contributes 25 million shares of Baxalta stock to the Plan, (ii) the Contributed Stock trading volumes remain around 6 million shares per day, and (iii) Fiduciary Counselors limits the disposition of Contributed Stock to 10% or less of daily volume (provided that such limitation is appropriate and consistent with ERISA). Therefore, Fiduciary Counselors expects the liquidity discount computed by Murray Devine will be very small.

(c) What impact, if any, the Contribution will have on the diversification of the Plan's portfolio. The IF Report provides that, while the Plan's acceptance of the Contributed Stock will skew the Plan's asset class allocations above the targeted amount for Large Cap stock of 24% of plan assets, this will be a temporary deviation and Fiduciary Counselors expects the allocation will return to pre-Contribution levels as the Contributed Stock is sold. Thus, the Independent Fiduciary does not believe that the Contribution will cause any significant disruption to the Plan's asset allocation.

(d) Whether the Plan will have sufficient liquidity to meet benefits payments. The IF Report indicates that, as of June 30, 2015, the Plan held approximately $120 million of its assets in cash or cash equivalents. According to the IF Report, since the Plan does not currently have a minimum funding obligation, its assets will increase by investment income, which is currently estimated to yield a 7.25% annual rate of return or approximately $218 million. Further, the largest Plan outflow is benefit payments of $160 million a year. Because the majority of the Plan's assets are in investments that can be liquidated on a daily basis, and the Contributed Stock will be converted to cash as it is liquidated, the IF Report concludes that the Plan will have sufficient liquidity to meet its needs over the time period while the Contributed Stock is held by the Plan.

(e) Whether the Contribution will sufficiently improve the Plan's funded status. According to the IF Report, the Contribution will increase the funded status of the plan by between $600 million and $750 million, thereby significantly improving the funded status of the Plan.[15] The IF Report also notes that the Actuary estimated no minimum funding requirement for the 2016, 2017, and 2018 plan years, indicating that the Plan will continue to be well-funded.

(f) The ability of the Contributed Stock to be readily liquidated given its publicly traded nature. The IF Report notes that the Contributed Stock is publicly traded, can be partially sold daily at market prices, and can be completely liquidated in as few as 42 trading days (nine weeks) at current trading volume without depressing the stock price,[16] the Contributed Stock can be readily converted into cash and is considered a highly liquid investment.

19. The IF Report also describes the Independent Fiduciary's other responsibilities in connection with the Contribution. In this regard, the Independent Fiduciary will monitor the covered transactions on a continuing basis and take all appropriate actions to safeguard the interests of the Plan to ensure that the transactions remain in the interests of the Plan, and, if not, take appropriate action available under the circumstances. Additionally, the Independent Fiduciary will determine whether and on what terms the Contribution should be accepted by the Plan, and if the Contribution is accepted by the Plan, vote proxies and respond to

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[14] According to Fiduciary Counselors, Murray Devine is well qualified for this engagement in that it is a nationally recognized valuation advisory firm and has provided valuation advisory services to private equity, corporate, venture capital, and commercial banking institutions since its inception in 1989. Fiduciary Counselors represents that it has utilized their services in other engagements. Furthermore, Murray Devine represents and warrants that it is independent of and unrelated to Baxter, Baxalta, and Fiduciary Counselors, and that:

- It does not directly or indirectly control, is not controlled by, and is not under common control with Baxter, Baxalta, or Fiduciary Counselors;
- Murray Devine, nor any of its officers, directors, or employees is an officer, director, partner or employee of Baxter, Baxalta or Fiduciary Counselors (or is a relative of such persons);
- The amount of compensation received by Murray Devine is not contingent of the valuation; and

The percentage of Murray Devine's revenue that is derived from any party in interest or its affiliates involved in the stock contribution is less than 5% of its previous year's annual revenue from all sources.

[15] For purposes of the IF Report, Fiduciary Counselors estimated a range for the value of the Contribution that takes into account the requirement that, for purposes of determining minimum funding, the amount of the Contribution will be deemed to be the lesser of the proceeds from the sale of the Contributed Stock or the value of the Contributed Stock at the time it is contributed to the Plan.

[16] The IF Report indicates that Baxalta anticipates receiving an opinion from its securities counsel that the Plan will not be considered an "affiliate" of Baxalta within the meaning of Rule 144. Accordingly, the limitation on the maximum number of shares that may be sold by an affiliate within any three month period (the Volume Limitation) will not apply to the sales of Contributed Stock by the Plan.

tender offers with respect to the Contributed Stock held by the Plan.

20. After Baxter makes the Contribution, the Independent Fiduciary will act as an investment manager to establish and administer the process (subject to such modifications as the Independent Fiduciary may make from time to time) for liquidation of the Contributed Stock as quickly as is prudent and consistent with market conditions and applicable laws. If, following the acceptance of the Contributed Stock and in the course of liquidating such stock, the Independent Fiduciary determines that continuing the liquidation of the Contributed Stock is imprudent, and is likely to remain imprudent for an indefinite period of time, the Independent Fiduciary shall notify the Committees, who shall arrange for the remaining Contributed Stock to be transferred to the portfolio of one or more of the Plan's independent investment managers, and the agreement with the Independent Fiduciary shall terminate.

Statutory Findings—Administratively Feasible

21. The Applicant represents that a proposed exemption is administratively feasible because the Independent Fiduciary, rather than the Department, will monitor the covered transactions for compliance with the terms of the proposed exemption and enforce the rights of the Plan in connection with the covered transactions. Furthermore, Baxter's proposed Contribution will be a single event, and the Contributed Stock will be sold by the Plan over a relatively short time period. Baxter states further that since Baxalta Stock is publicly traded and readily saleable, the sales will occur through open market transactions on a nationally recognized exchange, obviating the need for further monitoring.

Statutory Findings—In the Interest of the Plan and Its Participants and Beneficiaries

22. The Applicant states that a proposed exemption is in the interest of the Plan and its participants and beneficiaries. According to Baxter, the Contributed Stock will increase the assets of the Plan by as much as 20 percent, which will significantly improve the funded status of the Plan. Since the Contributed Stock will only be counted towards Baxter's minimum funding requirement as the shares are sold by the Plan and converted into more diversified investments, Baxter will still be obligated to make its minimum required contributions as if the Contributed Stock had never been received until and unless the shares are sold. Thus, the Applicant states that the Plan gets the benefit of the additional value of the Contributed Stock without giving up the benefit of minimum required cash contributions from Baxter.

Statutory Findings—Protective of the Rights of the Plan and Its Participants and Beneficiaries

23. The Applicant states that the requested exemption is protective of the rights of the Plan and its participants and beneficiaries. The Applicant reiterates that the principal protection for participants and beneficiaries is the fact that the Independent Fiduciary, acting solely in the interest of the participants and beneficiaries, will review the transaction to ensure that it is fair to the participants and beneficiaries, will monitor compliance with the exemption, and will oversee the Plan's sale of the Contributed Stock.

24. Additionally, the requested exemption would require Baxter to make cash contributions to the Plan to the extent that the cumulative proceeds from the sale of the Contributed Stock at each contribution due date (determined under section 303(j) of ERISA) are less than the cumulative cash contributions Baxter would have been required to make to the Plan in the absence of the Contribution. Such cash contributions must be made until all of the shares of Contributed Stock are sold. These conditions should mitigate the risk of the Plan holding too much of its assets in one security. Solely for purposes of determining the Plan's minimum funding requirements, AFTAP, and funding target attainment percentage, the Actuary will not count as a contribution to the Plan any Contributed Stock that has not been sold. The Applicant states that this protection is intended to ensure that Baxter does not receive a credit for minimum funding purposes under section 302 of ERISA for the Contributed Stock prior to the time the stock is sold, when it could still decrease in value. If the Independent Fiduciary determines that the Plan should retain shares of the Contributed Stock on an indefinite basis, such a decision will be communicated to the Committees.

25. The Applicant also states that Baxter must contribute to the Plan such cash amounts as are needed for the Plan to maintain an AFTAP of at least 80 percent as of the first day of each plan year during which the Plan holds shares of the Contributed Stock, as determined by the Actuary, without taking into account any Contributed Stock that has not been sold by April 1 of the plan year.

26. The Applicant also states that the value of the Contributed Stock cannot be more than 20 percent of the fair market value of the total assets of the Plan at the time Baxter makes the Contribution to the Plan. Additionally, the Plan may not pay any commissions, costs, or other expenses in connection with the contribution, holding, or subsequent sale of the Contributed Stock, and any such expenses paid by Baxter must not be treated as a contribution to the Plan.

Summary

27. In summary, the Applicant represents that the proposed Contribution will meet the criteria of section 408(a) of ERISA and section 4975(c)(2) of the Code for the above and the following reasons:

(a) The Independent Fiduciary will represent the interests of the Plan, the participants, and beneficiaries with respect to the Contribution;

(b) Solely for purposes of determining the Plan's minimum funding requirements, AFTAP, and funding target attainment percentage, the Actuary will not count as a contribution to the Plan any shares of Contributed Stock that have not been liquidated;

(c) For purposes of determining the amount of any Contribution, the Contributed Stock shall be deemed contributed only at the time it is sold, equal to the lesser of: (1) The proceeds from the sale of such Contributed Stock; or (2) the value of such Contributed Stock on the date of the initial contribution as determined by the Independent Fiduciary;

(d) The Contributed Stock represents no more than 20% of the fair market value of the total assets of the Plan at the time it is contributed to the Plan;

(e) The Plan pays no commissions, costs, or other expenses in connection with the Contribution, holding, or subsequent sale of the Contributed Stock, and any such expenses paid by Baxter will not be treated as a contribution to the Plan;

(f) Baxter makes cash contributions to the Plan to the extent that the cumulative proceeds from the sale of the Contributed Stock at each contribution due date are less than the cumulative cash contributions Baxter would have been required to make to the Plan, in the absence of the Contribution. Such cash contributions shall be made until all of the Contributed Stock is sold by the Plan; and

(g) Baxter contributes to the Plan cash amounts needed for the Plan to attain an AFTAP of at least 80% as of the first day of each plan year during which the Plan holds Contributed Stock, as determined by the Actuary, without taking into account any unsold Contributed Stock as of April 1 of the plan year.

Notice to Interested Persons

Baxter will provide notice of the proposed exemption to all persons with accrued benefits under the Plan, all beneficiaries of deceased participants, and all alternate payees pursuant to qualified domestic relations orders within five (5) calendar days of publication of the proposed exemption in the **Federal Register**. For all persons for whom disclosure by electronic media is permitted by 29 CFR 2520.104b–1(c), notice will be posted on Baxter's internal Web site and such persons will be notified of the posting by email in accordance with 29 CFR 2520.104b–1(c). Baxter will provide the notice to all other interested persons via first-class mail. In addition to the proposed exemption, as published in the **Federal Register**, Baxter will provide interested persons with a supplemental statement, as required, under 29 CFR 2570.43(a)(2). The supplemental statement will inform such employees of their right to comment on and to request a hearing with respect to this proposed exemption. The Department must receive all written comments and/or requests for a hearing within 35 days of the publication of this proposed exemption in the **Federal Register**. The Department will make all comments available to the public.

Warning: If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT: Mr. Erin S. Hesse of the Department, telephone (202) 693–8546 (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 25th day of April, 2016.

Lyssa E. Hall,

Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2016–09946 Filed 4–27–16; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office

[NARA–2016–029]

National Industrial Security Program Policy Advisory Committee Meeting

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of advisory committee meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 U.S.C. app 2) and implementing regulation 41 CFR 101–6, NARA announces the following committee meeting.

DATES: The meeting will be on June 6, 2016, from 2 p.m. to 4 p.m. EDT.

ADDRESSES: Gaylord Opryland Hotel, 2800 Opryland Drive, Delta Ballroom D, Nashville, TN 37214.

FOR FURTHER INFORMATION CONTACT: Robert Tringali, Program Analyst, by mail at ISOO, National Archives Building, 700 Pennsylvania Avenue NW., Washington, DC 20408, by telephone at (202) 357–5335, or by email at *robert.tringali@nara.gov.* Contact ISOO at *ISOO@nara.gov* and the NISPPAC at *NISPPAC@nara.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to discuss National Industrial Security Program policy matters. The meeting will be open to the public. However, due to space limitations and access procedures, you must submit the name and telephone number of individuals planning to attend to the Information Security Oversight Office (ISOO) no later than Wednesday, June 1, 2016.

Dated: April 20, 2016.

Patrice Little Murray,

Committee Management Officer.

[FR Doc. 2016–09991 Filed 4–27–16; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Office of Small Credit Unions (OSCUI) Grant Program Access For Credit Unions

Authority: 12 U.S.C. 1756, 1757(5)(D), and (7)(I), 1766, 1782, 1784, 1785 and 1786; 12 CFR 705.

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of Funding Opportunity.

SUMMARY: The National Credit Union Administration (NCUA) is issuing a Notice of Funding Opportunity (NOFO) to invite eligible credit unions to submit applications for participation in the OSCUI Grant Program (a.k.a. Community Development Revolving Loan Fund (CDRLF)), subject to funding availability. The OSCUI Grant Program serves as a source of financial support, in the form of technical assistance grants, for credit unions serving

predominantly low-income members. It also serves as a source of funding to help low-income designated credit unions (LICUs) respond to emergencies arising in their communities.

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A. Program Description

The purpose of the OSCUI Grant Program is to assist low-income designated credit unions (LICU) in providing basic financial services to their low-income members to stimulate economic activities in their communities. Through the OSCUI Grant Program, NCUA provides financial support in the form of technical assistance grants to LICUs. These funds help improve and expand the availability of financial services to these members. The OSCUI Grant Program also serves as a source of funding to help LICUs respond to emergencies. The Grant Program consists of Congressional appropriations that are administered by OSCUI, an office of the NCUA.

From June 1, 2016 to June 30, 2016 NCUA will accept applications from credit unions for the 2016 grant round. This grant round will include initiatives for Capacity and Growth, Cyber Security, Staff Training, and Student Interns.

Information about the OSCUI Grant Program, including more details regarding the 2016 grant round, other funding initiatives, amount of funds available, funding priorities, permissible uses of funds, funding limits, deadlines and other pertinent details, are periodically published in NCUA Letters to Credit Unions, in the OSCUI e-newsletter and on the NCUA Web site at *https://www.ncua.gov/services/Pages/small-credit-union-learning-center/services/grants-loans.aspx.*

Permissible Uses of Funds: NCUA will consider requests for funds consistent with the purpose of the OSCUI Grant Program. 12 CFR 705.1. Per § 705.10 of the regulation permissible uses for the grant fund include: (i) Development of new products or services for members including new or expanded share draft or credit card programs; (ii) Partnership arrangements with community based service organizations or government agencies; (iii) Enhancement and support of credit union internal capacity to serve its members and better enable it to provide financial services to the community in which the credit union is located.

NCUA will consider other proposed uses of funds that in its sole discretion it determines are consistent with the purpose of the OSCUI Grant Program, the requirements of the regulations, and this NOFO.

Regulation: Part 705 of NCUA's regulations implements the OSCUI Grant and Loan Program. 12 CFR 705. A revised Part 705 was published on November 2, 2011. 76 FR 67583. Additional requirements are found at 12 CFR parts 701 and 741. Applicants should review these regulations in addition to this NOFO. Each capitalized term in this NOFO is more fully defined in the regulations and grant guidelines. For the purposes of this NOFO, an Applicant is a Qualifying Credit Union that submits a complete Application to NCUA under the OSCUI Grant Program.

B. Federal Award Information

OSCUI grants are made to LICUs that meet the requirements in the program regulation and this NOFO, subject to funds availability.

Funds Availability: Congress appropriated $2 million to the OSCUI Grant Program for Fiscal Years 2016–2017. NCUA expects to award the entire amount appropriated under this NOFO. NCUA reserves the right to: (i) Award more or less than the amount appropriated; (ii) fund, in whole or in part, any, all, or none of the applications submitted in response to this NOFO; and (iii) reallocate funds from the amount that is anticipated to be available under this NOFO to other programs, particularly if NCUA determines that the number of awards made under this NOFO is fewer than projected.

C. Eligibility Information

The regulations specify the requirements a credit union must meet in order to be eligible to apply for assistance under this NOFO. See 12 CFR part 705.

1. *Eligible Applicants:* A credit union must have a Low-Income Credit Union (LICU) designation, or equivalent in the case of a Qualifying State-chartered Credit Union, in order to participate in the OSCUI Grant and Loan Program. Requirements for obtaining the designation are found at 12 CFR 701.34.

D. Application and Submission Information

1. *Application Form:* The application and related documents can be found on NCUA's Web site at *https://www.ncua.gov/services/Pages/small-credit-union-learning-center/services/grants-loans.aspx.*

2. *Minimum Application Content:* Each Applicant must complete and submit information regarding the applicant and requested funding. In addition, applicants will be required to certify applications prior to submission.

(a) *DUNS Number:* Based on an Office of Management and Budget (OMB) policy directive effective October 31, 2003, credit unions must have a Data Universal Numbering System (DUNS) number issued by Dun and Bradstreet (D&B) in order to be eligible to receive funding from the OSCUI Grant Program. NCUA will not consider an Application that does not include a valid DUNS number. Such an Application will be deemed incomplete and will be declined. Information on how to obtain a DUNS number may be found on D&B's Web site at *http://fedgov.dnb.com/webform* or by calling D&B, toll-free, at 1–866–705–5711.

(b) *Employer Identification Number:* Each Application must include a valid and current Employer Identification Number (EIN) issued by the U.S. Internal Revenue Service (IRS). NCUA will not consider an application that does not include a valid and current EIN. Such an Application will be deemed incomplete and will be declined. Information on how to obtain a EIN may be found on the IRS's Web site at *www.irs.gov.*

(c) *Submission of Application:* Under this NOFO, Applications must be submitted online at *http://www.cybergrants.com/ncua.* An Applicant requesting a grant must complete an online grant application form which includes required responses. The required responses will address the proposed use of funds and how the credit union will assess the impact of the funding.

3. *Submission Dates and Times:* The application open period is from June 1, 2016 thru June 30, 2016 for different grant initiatives. For each initiative funds may be exhausted prior to the deadlines, at which time the programs/funds will no longer be available.

4. *Intergovernmental Review:* Not Applicable.

5. *Other Submission Requirments:* Under this NOFO, Applications must be submitted online at *http://www.cybergrants.com/ncua.*
a. Disclosure Agreement
b. Mandatory Clauses

E. Application Review Information

1. *Review and Selection Process:*

(a) *Eligibility and Completeness Review:* NCUA will review each Application to determine whether it is complete and that the Applicant meets the eligibility requirements described in the Regulations, this NOFO, and the grant guidelines. An incomplete Application or one that does not meet the eligibility requirements will be declined without further consideration.

(b) *Substantive Review:* After an Applicant is determined eligible and its Application is determined complete, NCUA will conduct a substantive review in accordance with the criteria and procedures described in the Regulations, this NOFO, and the grant guidelines. NCUA reserves the right to contact the Applicant during its review for the purpose of clarifying or confirming information contained in the Application. If so contacted, the Applicant must respond within the time specified by NCUA or NCUA, in its sole discretion, may decline the application without further consideration.

(c) *Evaluation and Scoring:* The evaluation criteria for each initiative will be more fully described in the grant guidelines.

(d) *Input from Examiners:* NCUA may not approve an award to a credit union for which its NCUA regional examining office or State Supervisory Agency (SSA), if applicable, indicates it has safety and soundness concerns. If the NCUA regional office or SSA identifies a safety and soundness concern, OSCUI, in conjunction with the regional office or SSA, will assess whether the condition of the Applicant is adequate to undertake the activities for which funding is requested, and the obligations of the loan and its conditions. NCUA, in its sole discretion, may defer decision on funding an Application until the credit union's safety and soundness conditions improve.

(e) *Award Selection:* In general, NCUA will make its award selections based on a consistent scoring system where each applicant will receive an individual score. NCUA will consider the impact of the funding. When grant demand is high applications may be ranked based on the aforementioned in addition to factors listed in the grant guidelines.

2. *Anticipated Announcement and Federal Award Dates:* See part D.3.

F. Federal Award Administration Information

1. *Notice of Award:* NCUA will notify each Applicant of its funding decision. Notification will generally be by email. Applicants that are approved for funding will also receive instructions on how to proceed with the reimbursement request for disbursement of funds.

2. *Administration and National Policy Requirements:* The specific terms and conditions governing a grant will be established in the grant guidelines for each initiative.

3. Reimbursement and *Reporting:* Each awarded credit union must submit a reimbursement request in order to receive the awarded funds. The reimbursement requirements are specific to each initiative. In general, the reimbursement request will require proof of expenses, documentation, an explanation of the impact of funding and any success or failure to meet objectives for use of proceeds, outcome, or impact. NCUA, in its sole discretion, may modify these requirements. Awardees (credit unions) are required to submit the reimbursement request within the expiration date specified in the approval letter.

G. Agency Contacts

1. *Methods of Contact:* Further information can be found at: *https://www.ncua.gov/services/Pages/small-credit-union-learning-center/services/grants-loans.aspx.* For questions email: National Credit Union Administration, Office of Small Credit Union Initiatives at *OSCUIAPPS@ncua.gov.*

2. *Information Technology Support:* People who have visual or mobility impairments that prevent them from using NCUA's Web site should call (703) 518–6610 for guidance (this is not a toll free number).

By the National Credit Union Administration Board on April 21, 2016.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2016–09913 Filed 4–27–16; 8:45 am]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440; License No. NPF–58; NRC–2015–0212]

In the Matter of FirstEnergy Nuclear Operating Company, FirstEnergy Nuclear Generation, LLC, and Ohio Edison Company; Perry Nuclear Power Plant, Unit 1

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct transfer of license; order.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an order approving the direct transfer of the leased interests in Facility Operating License NPF–58 for Perry Nuclear Power Plant, Unit 1, from the current holder, Ohio Edison Company (OE), to FirstEnergy Nuclear Generation, LLC (FENGen). As a result of the transaction, FENGen will become the sole owner of the Perry Nuclear Power Plant, Unit 1. The NRC is also issuing a conforming amendment to the facility operating license for administrative purposes to reflect the proposed license transfer. No physical changes to the facility or operational changes were proposed in the application. The Order is effective upon issuance.

DATES: The Order was issued on April 15, 2016, and is effective for one year.

ADDRESSES: Please refer to Docket ID NRC–2015–0212 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0212. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Kimberly Green, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1627; email: *Kimberly.Green@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated at Rockville, Maryland, this 20th of April 2016.

For the Nuclear Regulatory Commission.

Kimberly J. Green,

Senior Project Manager, Plant Licensing Branch III–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

Attachment—Order Approving Direct Transfer of License and Approving Conforming Amendment

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

In the Matter of: FirstEnergy Nuclear Operating Company; FirstEnergy Nuclear Generation, LLC; Ohio Edison Company; Perry Nuclear Power Plant, Unit 1, Docket No. 50–440, License No. NPF–58.

Order Approving Direct Transfer of License and Approving Conforming Amendment

I.

FirstEnergy Nuclear Operating Company (FENOC), FirstEnergy Nuclear Generation, LLC (FENGen), and the Ohio Edison Company (OE) are the licensees of Perry Nuclear Power Plant, Unit 1 (PNPP). FENOC acts as agent for itself and the other licensees and has exclusive responsibility for and control over the physical construction, operation, and maintenance of PNPP, Unit 1, as reflected in Facility Operating License NPF–58. The facility is located on the shore of Lake Erie in Lake County, Ohio.

II.

By application dated June 30, 2015 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML15181A366), as supplemented by letter dated January 18, 2016 (ADAMS Accession No. ML16018A003), FENOC, acting as agent for and on behalf of FENGen and OE, pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), 50.80, "Transfer of licenses," requested that the U.S. Nuclear Regulatory Commission (NRC) consent to the direct transfer of leased interests in Facility Operating License No. NPF–58 from OE to FENGen. The application is in connection with the expiration of OE's lease of 12.58-percent interest in PNPP, which expires at midnight on May 30, 2016, and the related transfer of the leased interests to FENGen.

Supplemental information was provided by letter dated January 18, 2016 (hereinafter, the June 30, 2015, application and the January 18, 2016, supplemental information will be referred to collectively as the "application"). FENOC also requested approval of a conforming license amendment that would delete references to OE in the license to reflect the transfer of the leased interest. No physical changes to the facilities or operational changes were proposed in the application. After completion of the proposed transfer, FENGen and FENOC will be the owner and operator, respectively, of the facility.

Approval of the transfer of the facility operating license and conforming license amendment was requested by the applicant pursuant to 10 CFR 50.80 and 10 CFR 50.90, "Application for amendment of license, construction permit, or early site permit." A notice entitled, "Consideration of Approval of Transfer of License and Conforming Amendment," was published in the **Federal Register** on September 16, 2015 (80 FR 55656), as corrected on September 29, 2015 (80 FR 58508). No comments or hearing requests were received.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the NRC shall give its consent in writing. Upon review of the information in the licensee's application, and other information before the Commission, the NRC staff has determined that FENGen is qualified to hold the ownership interests in the facility previously held by OE, and FENOC is qualified to hold the operating authority under the license, and that the transfer of ownership interests in the facility to FENGen, as described in the application, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the NRC, pursuant thereto, subject to the condition set forth below. The NRC staff has further found that the application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendment will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed amendment will be in accordance with 10 CFR part 51 of the Commission's regulations and all applicable requirements have been satisfied. The findings set forth above are supported by an NRC safety evaluation dated April 15, 2016.

III.

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Act; 42 U.S.C. Sections 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *it is hereby ordered* that the application regarding the proposed direct transfer of the license is approved, subject to the following condition:

FirstEnergy Nuclear Operating Company and FirstEnergy Nuclear Generation, LLC, shall provide satisfactory documentary evidence to the Director of the Office of Nuclear Reactor Regulation, that as of the date of license transfer, the licensees reflected in the amended license have obtained the appropriate amount of insurance required by 10 CFR part 140 and 10 CFR 50.54(w).

It is further ordered that, consistent with 10 CFR 2.1315(b), the license amendment that makes changes, as indicated in Enclosure 3 to the cover letter forwarding this order, to reflect the subject direct license transfer is approved. The amendment shall be issued and made effective at the time the proposed direct license transfer action is completed.

It is further ordered that after receipt of all required regulatory approvals of the proposed direct transfer action, FENOC shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt no later than 1 business day prior to the date of the closing of the direct transfer. Should the proposed transfer of the license not be completed within 1 year of this order's date of issue, this order shall become null and void, provided, however, upon written application and good cause shown, such date may be extended by order.

This order is effective upon issuance.

For further details with respect to this order, see the initial application dated June 30, 2015, as supplemented by letter dated January 18, 2016, and the safety evaluation dated the same date as this order (ADAMS Accession No. ML16078A092), which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Room O–1 F21 (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by email at *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland this 15th day of April 2016.

For The Nuclear Regulatory Commission.

William M. Dean,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 2016–09984 Filed 4–27–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–313, 50–368, 50–416, 50–247, 50–286, 50–333, 50–255, 50–293, 50–458, 50–271, and 50–382; EA–15–100; NRC–2016–0087]

In the Matter of All Power Reactor Licensees Owned and Operated by Entergy Nuclear Operations, Inc.; Entergy Operations, Inc.; and Entergy Nuclear Generation Company

AGENCY: Nuclear Regulatory Commission.

ACTION: Confirmatory order; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a confirmatory order to Entergy Operations, Inc. (Entergy) confirming agreements reached in an Alternative Dispute Resolution mediation session held on February 19, 2016. As part of the agreement, Entergy will complete a review of the integrity events within the Entergy Nuclear Fleet over the past 5 years, establish a corporate lead for oversight of the company's fire watch programs, and improve training programs according to timelines established in the Confirmatory Order. Entergy is also required to notify the NRC periodically of the status of its efforts.

DATES: The confirmatory order was issued on April 6, 2016.

ADDRESSES: Please refer to Docket ID NRC–2016–0087 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0087. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For questions about the Order, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select NRC: ADAMS Public Documents and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: John Kramer, Region IV, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; 817–200–1121; or by email to *John.Kramer@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated this 18th day of April 2016.

For the Nuclear Regulatory Commission.

Mark L. Dapas,

Regional Administrator.

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

In the Matter of All Power Reactor Licensees Owned and Operated by Entergy Nuclear Operations, Inc.; Entergy Operations, Inc. and Entergy Nuclear Generation Company

[Docket Nos. (as shown in Attachment); License Nos. (as shown in Attachment)]

EA–15–100

Confirmatory Order Modifying License

I.

Entergy Operations, Inc. (licensee or Entergy) is the holder of Reactor Operating License NPF–38 issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) part 50 on March 16, 1985. The license authorizes the operation of the Waterford Steam Electric Station, Unit 3 (Waterford) in accordance with the conditions specified therein.

The term Entergy Nuclear Fleet used in the Confirmatory Order refers to all power reactor licensees owned and operated by Entergy Nuclear Operations, Inc.; Entergy Operations Inc.; and Entergy Nuclear Generation Company.

This Confirmatory Order is the result of a preliminary settlement agreement reached during an Alternative Dispute Resolution (ADR) mediation session conducted on February 19, 2016.

II.

On February 3, 2014, the NRC's Office of Investigations (OI), Region IV Field Office, initiated an investigation to determine whether fire protection personnel assigned to Entergy's Waterford facility willfully falsified fire protection surveillance records and whether there was any managerial awareness with the failure to identify and correct. During the investigation, it became apparent that another manger failed to provide complete and accurate information to an access authorization reviewing official, associated with the reinstatement of unescorted access for one of the contract fire watch individuals. The investigation was completed on May 19, 2015, and was documented in OI Report 4–2014–017.

Based on the results of the investigation, the NRC concluded that willful violations of Title 10 of the *Code of Federal Regulations* (10 CFR) 50.9, 10 CFR 50.48, and 10 CFR 73.56(f)(3) occurred. Specifically, on multiple occasions between July 2013 and April 2014, seven contractor individuals willfully failed to conduct compensatory hourly fire watches and willfully falsified the fire watch tour logs by initialing that fire watches were performed with knowledge that watches had not been performed. In addition, an Entergy supervisor willfully failed to identify and take corrective actions when provided with information of suspected wrongdoing by contract fire watch individuals. Further, on January 13, 2014, a contractor manager willfully failed to provide complete and accurate information in all material respects, regarding the trustworthiness and reliability of an individual applying for unescorted access to Waterford.

In a letter dated December 14, 2015 (ML15350A197), the NRC provided Entergy the results of the investigation, informed Entergy that escalated enforcement action was being considered for the apparent violations, and offered Entergy the opportunity to attend a predecisional enforcement conference or to participate in ADR in which a neutral mediator with no decision-making authority would facilitate discussions between the NRC and Entergy. The neutral mediator would assist the NRC and Entergy in reaching an agreement, if possible. In response to the NRC's offer, Entergy requested use of the ADR process to resolve differences it had with the NRC. This Confirmatory Order is issued pursuant to the agreement reached during the ADR process.

III.

During the ADR session held on February 19, 2016, a preliminary settlement agreement was reached. In addition, the NRC recognized the corrective actions that Entergy has already implemented associated with the events that formed the basis of this matter. These actions at Waterford include:

A. Waterford Procedure FP–001–014, "Duties of a Firewatch," was revised. The following changes were incorporated:

1. Added responsibility of Maintenance Support for systematic monitoring of performance within the fire watch program (corrective action to preclude repetition in the root cause analysis).

2. Added additional procedural requirements for the fire watch oversight monitoring program and required periodic review by an appropriate member of the site senior leadership team.

3. Clearly defined the duties, responsibilities, and qualifications of a contract fire watch and the fire watch supervisor.

4. Revised Attachment 8.1, "Fire Watch Log," to clearly state who the fire watches should notify if there are any issues identified during their tours.

5. Included a requirement that the fire watches maintain the log (Attachment 8.1) in their possession during tours and that place keeping be used.

6. Included a requirement to periodically verify that Attachment 8.1 is consistent with the fire impairments required by the technical requirements manual.

B. Fire watch supervisory monitoring program is being implemented as follows:

1. The Maintenance Support Superintendent shall provide sufficient oversight to verify that fire watch inspections are completed as required.

2. A minimum of twice per month, personnel designated by the Maintenance Support superintendent shall observe the fire watch during the performance of their duties.

3. The Maintenance Support supervisor will also coordinate with security to obtain keycard and/or door alarm histories and conduct a review to ensure fire watch personnel are performing tours satisfactorily.

C. An evaluation of other contractors performing work on the Waterford site to ensure proper level of oversight is being provided was completed. The level of oversight for contractors performing work was determined to be appropriate.

D. An Entergy Nuclear Fleet operating experience review was performed. This review determined that each Entergy Nuclear Fleet site needed to review the root cause for this issue. Actions were issued at each site to determine any vulnerabilities. All other Entergy Nuclear Fleet sites concluded the site specific procedures adequately covered the gaps identified at Waterford except one site. That site initiated a condition report to address gaps in its fire watch program and performed procedure changes. The actions were completed by February 5, 2015.

E. Communicated the lessons-learned to Waterford supervisors and departmental performance improvement personnel (department corrective action program personnel).

F. Expectations were reinforced with Maintenance Support leadership for implementation of the fire watch program and for implementation of contract manager responsibilities.

G. On October 29, 2014, implemented a Guard 1 Plus^{R} electronic documentation system. This system is used in conjunction with the paper fire watch log.

H. Effectiveness review action was performed and concluded that the corrective action plan was effective.

I. Waterford Nuclear Independent Oversite (quality assurance) review of the site response was completed on December 9, 2014. The follow-up surveillance determined the quality assurance finding was adequately dispositioned and addressed.

J. Independent of the events underlying these violations and issues, Entergy developed and administered training on the provisions of 10 CFR 50.5 and 50.9 for all Entergy employees at its Entergy Nuclear Fleet sites.

On March 31, 2016, Entergy consented to issuing this Confirmatory Order with the commitments, as described in Section V below. Entergy further agreed that this Confirmatory Order is to be effective 30 days after its issuance and that Entergy has waived its right to a hearing.

IV.

Since the licensee has agreed to take additional actions to address NRC concerns, as set forth in Item III above, the NRC has concluded that its concerns can be resolved through issuance of this Confirmatory Order.

I find that Entergy's commitments as set forth in Section V are acceptable and necessary, and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that Entergy's commitments be confirmed by this Confirmatory Order. Based on the above and Entergy's consent, this Confirmatory Order is effective 30 days after its issuance.

V.

Accordingly, pursuant to Sections 104b, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 50, IT IS HEREBY ORDERED, THAT:

A. Entergy will retain an industrial psychologist, or similarly qualified person, and within 9 months of the issuance date of the Confirmatory Order, will complete a review of those integrity events within the Entergy Nuclear Fleet over the past 5 years to look for common themes or causes associated with the events and to recommend actions that Entergy can take to prevent similar events in the future. This review will also include an evaluation of previous fleet-wide training effectiveness. Entergy will share the results of this review and any contemplated actions with the NRC. Within 18 months of the issuance date of the Confirmatory Order, if the review reveals general industry insights/lessons learned, Entergy will share those insights with the industry in an appropriate industry forum to be determined based on consultation with the NRC.

B. In December 2014, Entergy issued Procedure EN–OM–126, "Management and Oversight of Supplemental Personnel," to enhance Entergy's management and oversight of supplemental workers. Within 9 months of the issuance date of the Confirmatory Order, Entergy will conduct an effectiveness review of implementation of Procedure EN–OM–126 at all Entergy Nuclear Fleet sites. Entergy will share the results of this review and its proposed actions to address any identified performance gaps with the NRC.

C. Within 6 months of the issuance date of the Confirmatory Order, Entergy will assign a corporate lead for governance and oversight of the Entergy Nuclear Fleet fire watch program. In conjunction with this assignment, Entergy will issue an Entergy Nuclear Fleet procedure or revise an existing procedure, as appropriate, to provide the common requirements for Entergy

Nuclear Fleet fire watch programs. The responsibilities of the lead will include ensuring the consistent application of the subject procedure across the Entergy Nuclear Fleet.

D. Within 3 months of the issuance date of the Confirmatory Order, Entergy will revise the appropriate Entergy Nuclear Fleet procedure to provide a process to address requests for the reinstatement of unescorted access authorization for a worker whose unescorted access has been temporarily placed "on hold" or assigned some other comparable interim status. The revision must ensure that the Access Authorization Reviewing Official has the relevant information and appropriate approvals before deciding whether to reinstate the worker's unescorted access.

E. Within 6 months of the issuance date of the Confirmatory Order, Entergy will review and revise, as necessary, Entergy Nuclear Fleet supervisor training to ensure that it addresses the responsibilities and actions of supervisors who become aware of facts and circumstances potentially impacting a person's trustworthiness and reliability. If Entergy determines revisions to the supervisory training are necessary, the training will be delivered within 12 months of the issuance date of the Confirmatory Order. Additionally, within 2 months of the issuance date of the Confirmatory Order, Entergy will develop and publish a communication to all supervisors at its Entergy Nuclear Fleet sites reminding them of their responsibility to report issues impacting workers' trustworthiness and reliability to access authorization personnel.

F. Within 3 months of the issuance date of the Confirmatory Order, Entergy will have conducted a briefing of all fire watch personnel, at each of its Entergy Nuclear Fleet sites, on the importance of the fire watch activity to the nuclear safety of the facility. In addition, within 3 months of the issuance date of the Confirmatory Order, this briefing will be incorporated as part of new fire watch personnel training. Within 9 months of the issuance date of the Confirmatory Order, Entergy will perform a review of other tasks where the importance of the task to reactor safety may not be apparent to the personnel performing the task and conduct similar training.

G. Notifications to the NRC when actions are completed.

1. Unless otherwise specified, Entergy will submit written notification to the Director, Division of Reactor Safety, USNRC Region IV, 1600 East Lamar Blvd., Arlington, Texas 76011–4511, at intervals not to exceed 6 months until the terms of this Confirmatory Order are completed, providing a status of each item in the Order.

2. Entergy will provide its basis for concluding that the terms of the Confirmatory Order have been satisfied, to the NRC, in writing.

H. Administrative items.

1. The NRC will consider the Confirmatory Order an escalated enforcement action with respect to any future enforcement actions.

2. In consideration of the elements delineated above, the NRC agrees not to issue a Notice of Violation for the violations discussed in NRC Inspection Report 05000382/2015011 and NRC Investigation Report 4–2014–017 dated December 14, 2015 (EA–15–100) and not to issue an associated civil penalty.

3. This agreement is binding upon successors and assigns of Entergy.

The Regional Administrator, Region IV, may, in writing, relax or rescind any of the above conditions upon demonstration by Entergy of good cause.

VI.

Any person adversely affected by this Confirmatory Order, other than Entergy, may request a hearing within 30 days of the issuance date of this Confirmatory Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007, as amended at 77 FR 46562, August 3, 2012), which is codified in pertinent part at 10 CFR part 2, subpart C. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Electronic Filing Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. Further information on the Web-based submission form is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Electronic Filing Help Desk through the "Contact Us" link located on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call to 866–672–7640. The NRC Electronic Filing Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket, which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, participants are requested not to include copyrighted materials in their submission, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application.

If a person other than Entergy requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue a separate order designating the time and place of any hearings, as appropriate. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be effective and final 30 days after the issuance date of this Confirmatory Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

FOR THE NUCLEAR REGULATORY COMMISSION.

Marc L. Dapas,
Regional Administrator.

Dated this 6th day of April 2016.

Attachment 1

All Power Reactor Licensees Owned and Operated by Entergy Nuclear Operations, Inc.; Entergy Operations, Inc.; and Entergy Nuclear Generation Company

Arkansas Nuclear One. Units 1 and 2

Entergy Operations, Inc.
Docket Nos. 50–313, 50–368
License Nos. DRP–51; NPF–6

Mr. Jeremy Browning, Site Vice President
Arkansas Nuclear One
Entergy Operations, Inc.
1448 SR 333
Russellville, AR 72802–0967

Grand Gulf Nuclear Station

Entergy Operations, Inc.
Docket No. 50–416
License No. NPF–29

Mr. Kevin Mulligan, Site Vice President
Entergy Operations, Inc.
Grand Gulf Nuclear Station
P.O. Box 756
Port Gibson, MS 39150

Indian Point Nuclear Generating, Units 2 and 3

Entergy Nuclear Operations, Inc.
Docket Nos. 50–247 and 50–286
License Nos. DPR–26 and DPR–64

Mr. Larry Coyle, Site Vice President
Entergy Nuclear Operations, Inc.
Indian Point Energy Center
450 Broadway, GSB
Buchanan, NY 10511–0249

James A FitzPatrick Nuclear Power Plant

Entergy Nuclear Operations, Inc.
Docket No. 50–333
License No. DPR–59

Mr. Brian Sullivan, Site Vice President
Entergy Nuclear Operations, Inc.
James A FitzPatrick Nuclear Power Plant
P.O. Box 110
Lycoming, NY 13093

Palisades Nuclear Plant

Entergy Nuclear Operations, Inc.
Docket No. 50–255
License No. DPR–20

Mr. Anthony Vitale, Vice President, Operations
Entergy Nuclear Operations, Inc.
Palisades Nuclear Plant
27780 Blue Star Memorial Highway
Covert, MI 49043

Pilgrim Nuclear Power Station

Entergy Nuclear Generation Company
Docket No. 50–293
License No. DPR–35

Mr. John Dent, Site Vice President
Entergy Nuclear Operations Inc.
Pilgrim Nuclear Power Station
600 Rocky Hill Road
Plymouth, MA 02360–5508

River Bend Station

Entergy Operations, Inc.
Docket No. 50–458
License No. NPF–47

Mr. Eric W. Olson, Site Vice President
Entergy Operations, Inc.
River Bend Station
5485 US Highway 61 N
St. Francisville, LA 70775

Vermont Yankee Nuclear Power Station

Entergy Nuclear Operations, Inc.
Docket No. 50–271
License No. DPR–28

Mr. Christopher Wamser, Site Vice President
Entergy Nuclear Operations, Inc.
Vermont Yankee Nuclear Power Station
P. O. Box 250
Vernon, VT 05354

Waterford Steam Electric Station. Unit 3

Entergy Operations, Inc.
Docket No. 50–382
License No. NPF–38

Mr. Michael R. Chisum, Site Vice President
Entergy Operations, Inc.
Waterford Steam Electric Station
17265 River Road
Killona, LA 70057–0751

[FR Doc. 2016–09841 Filed 4–27–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS)

Meeting of the ACRS Subcommittee On Reliability & PRA; Notice of Meeting

The ACRS Subcommittee on Reliability & PRA will hold a meeting on May 18, 2016, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, May 18, 2016, 8:30 a.m. until 12:00 p.m.

The Subcommittee will be briefed on a soon-to-be-published report (NUREG/KM–0009) on historical review and observation of defense-in-depth. The Subcommittee will also be briefed on the plan to update Regulatory Guide 1.174. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), John Lai (Telephone 301–415–5197 or Email: *John.Lai@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2015, (80 FR 63846).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: April 19, 2016.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2016–09885 Filed 4–27–16; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

In the Matter of Valentine Beauty Inc., File No. 500–1; Order of Suspension of Trading

April 26, 2016.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Valentine Beauty Inc. (“VLBI”) because of concerns regarding the accuracy and adequacy of information in the marketplace and suspicious market activity relating to VLBI common stock. VLBI is a Nevada corporation with its principal place of business located in Sunrise, Florida. Its stock is quoted on OTC Link, operated by OTC Markets Group Inc., under the ticker: VLBI.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

THEREFORE, IT IS ORDERED, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT on April 26, 2016, through 11:59 p.m. EDT on May 9, 2016.

By the Commission.

Brent J. Fields,

Secretary.

[FR Doc. 2016–10031 Filed 4–26–16; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Order Regarding Review of Fasb Accounting Support Fee for 2016 Under Section 109 of the Sarbanes-Oxley Act of 2002

Securities Act of 1933, Release No. 10073/April 22, 2016
Securities Exchange Act of 1934, Release No. 77698/April 22, 2016

The Sarbanes-Oxley Act of 2002 (the “Act”) provides that the Securities and Exchange Commission (the “Commission”) may recognize, as generally accepted for purposes of the securities laws, any accounting principles established by a standard setting body that meets certain criteria. Consequently, Section 109 of the Act provides that all of the budget of such a standard setting body shall be payable from an annual accounting support fee assessed and collected against each issuer, as may be necessary or appropriate to pay for the budget and provide for the expenses of the standard setting body, and to provide for an independent, stable source of funding, subject to review by the Commission. Under Section 109(f) of the Act, the amount of fees collected for a fiscal year shall not exceed the “recoverable budget expenses” of the standard setting body. Section 109(h) amends Section 13(b)(2) of the Securities Exchange Act of 1934 to require issuers to pay the allocable share of a reasonable annual accounting support fee or fees, determined in accordance with Section 109 of the Act.

On April 25, 2003, the Commission issued a policy statement concluding that the Financial Accounting Standards Board (“FASB”) and its parent organization, the Financial Accounting

Foundation ("FAF"), satisfied the criteria for an accounting standard-setting body under the Act, and recognizing the FASB's financial accounting and reporting standards as "generally accepted" under Section 108 of the Act.[1] As a consequence of that recognition, the Commission undertook a review of the FASB's accounting support fee for calendar year 2016.[2] In connection with its review, the Commission also reviewed the budget for the FAF and the FASB for calendar year 2016.

Section 109 of the Act also provides that the standard setting body can have additional sources of revenue for its activities, such as earnings from sales of publications, provided that each additional source of revenue shall not jeopardize, in the judgment of the Commission, the actual or perceived independence of the standard setter. In this regard, the Commission also considered the interrelation of the operating budgets of the FAF, the FASB, and the Governmental Accounting Standards Board ("GASB"), the FASB's sister organization, which sets accounting standards used by state and local government entities. The Commission has been advised by the FAF that neither the FAF, the FASB, nor the GASB accept contributions from the accounting profession.

The Commission understands that the Office of Management and Budget ("OMB") has determined the FASB's spending of the 2016 accounting support fee is sequestrable under the Budget Control Act of 2011.[3] So long as sequestration is applicable, we anticipate that the FAF will work with the Commission and Commission staff as appropriate regarding its implementation of sequestration.

After its review, the Commission determined that the 2016 annual accounting support fee for the FASB is consistent with Section 109 of the Act. Accordingly,

It is ordered, pursuant to Section 109 of the Act, that the FASB may act in accordance with this determination of the Commission.

By the Commission.

Brent J. Fields,

Secretary.

[FR Doc. 2016–09930 Filed 4–27–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77695; File No. SR–BOX–2016–20]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule on the BOX Market LLC ("BOX") Options Facility

April 22, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 21, 2016, BOX Options Exchange LLC (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to amend the BOX Volume Rebate ("BVR") in Section I.B.2 of the Fee Schedule on the BOX Market LLC ("BOX") options facility. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule for trading on BOX. Specifically, the Exchange proposes to amend the BOX Volume Rebate ("BVR") in Section I.B.2 of the Fee Schedule.

Under the current BVR, the Exchange offers a tiered per contract rebate for all PIP Orders and COPIP Orders of 100 contracts and under that do not trade solely with their contra order. These PIP and COPIP executions are awarded a per contract rebate calculated on a monthly basis by totaling the Participant's PIP and COPIP volume submitted to BOX, relative to the total national Customer volume in multiply-listed options classes.

The current per contract rebate for Participants in PIP and COPIP Transactions under the BVR is:

Tier	Percentage thresholds of national customer volume in multiply-listed options classes (monthly)	Per contract rebate (all account types)	
		PIP	COPIP
1	0.000% to 0.159%	($0.00)	($0.00)
2	0.160 to 0.339	(0.04)	(0.02)
3	0.340 to 0.99	(0.11)	(0.04)
4	1.00 and Above	(0.14)	(0.06)

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[1] Financial Reporting Release No. 70.

[2] The FAF's Board of Trustees approved the FASB's budget on November 17, 2015. The FAF submitted the approved budget to the Commission on December 4, 2015.

[3] See "OMB Report Pursuant to the Sequestration Transparency Act of 2012" (Pub. L. 112–155), page 222 of 224 at: *http://www.whitehouse.gov/sites/default/files/omb/assets/legislative_reports/stareport.pdf.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

The Exchange proposes to introduce an additional rebate in the BVR. Specifically, PIP Orders and COPIP Orders of 100 and under contracts that trade solely with their contra order will receive a $0.05 per contract rebate, regardless of tier.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes the proposed amendment to the BVR is reasonable, equitable and non-discriminatory. The BVR was adopted to attract Public Customer order flow to the Exchange by offering these Participants incentives to submit their PIP and COPIP Orders to the Exchange. The Exchange believes it is reasonable and appropriate to adjust the BVR to provide additional incentives for Public Customers, which will result in greater liquidity and ultimately benefit all Participants trading on the Exchange.

The Exchange believes it is reasonable, equitable and non-discriminatory to introduce a flat $0.05 rebate in the BVR for PIP Orders and COPIP Orders of 100 and under contracts that trade solely with their contra order. The Exchange recently amended the BVR to restrict the tiered per contract rebates in the BVR to only those PIP and COPIP Orders of 100 and under contracts that do not trade solely with their contra order.[6] The Exchange now believes it is reasonable to instead give those orders a flat $0.05 rebate, regardless of tier. The BVR is intended to incentivize Participants to direct Customer order flow to the Exchange, and while the Exchange believes that the potentially higher BVR rebate tiers are not necessary for internalized PIP Orders that only trade against their contra order, a flat $0.05 rebate is the appropriate incentive for these orders. The Exchange also believes that a flat $0.05 rebate for internalized COPIP Orders that only trade against their contra order is a reasonable incentive.

Further, the Exchange believes the proposed rebate is equitable and not unfairly discriminatory because Participants are eligible to receive a rebate provided they meet the order type requirements.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed fee change is reasonably designed to enhance competition in BOX transactions, particularly auction transactions.

The proposed rule change amends the BVR to provide a flat rebate for PIP or COPIP Order [sic] that trade solely with their contra order. The Exchange does not believe that the proposed change burdens competition and will instead help promote competition by providing additional incentives for market participants to submit customer order flow to BOX and thus, create a greater opportunity for retail customers to receive additional price improvement.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act[7] and Rule 19b–4(f)(2) thereunder,[8] because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2016–20 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2016–20. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2016–20, and should be submitted on or before May 19, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Brent J. Fields,

Secretary.

[FR Doc. 2016–09902 Filed 4–27–16; 8:45 am]

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[5] 15 U.S.C. 78f(b)(4) and (5).

[6] *See* SR–BOX–2106–17 [sic].

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77690; File No. SR–Phlx–2016–52]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Qualified Contingent Cross Pricing

April 22, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 15, 2016, NASDAQ PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Pricing Schedule at Section II, entitled "Multiply Listed Options Fees." Specifically, the Exchange is proposing to amend the Qualified Contingent Cross ("QCC") pricing.

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on May 2, 2016.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Pricing Schedule at Section II, entitled "Multiply Listed Options Fees." Specifically, the Exchange is proposing to amend QCC pricing.

Today, the Exchange assesses a QCC Transaction Fee of $0.20 per contract to a Specialist,[3] Market Maker,[4] Firm[5] and Broker-Dealer.[6] Customers[7] and Professionals[8] are not assessed a QCC Transaction Fee. The Exchange also pays rebates on QCC Orders as follows:

QCC REBATE SCHEDULE

Tier	Threshold	Rebate per contract
Tier 1	0 to 99,999 contracts in a month	$0.00
Tier 2	100,000 to 299,999 contracts in a month	0.05
Tier 3	300,000 to 499,999 contracts in a month	0.07
Tier 4	500,000 to 699,999 contracts in a month	0.08
Tier 5	700,000 to 999,999 contracts in a month	0.09
Tier 6	Over 1,000,000 contracts in a month	0.11

Rebates are paid for all qualifying executed QCC Orders, as defined in Rule 1080(o)[9] and Floor QCC Orders, as defined in Rule 1064(e),[10] except where the transaction is either: (i) Customer-to-Customer; (ii) Customer-to-Professional or (iii) a dividend, merger, short stock interest or reversal or conversion strategy execution.[11] The maximum QCC Rebate to be paid in a given month will not exceed $450,000.[12] The Exchange pays QCC Rebates to market participants acting as agent on qualifying QCC Orders per the QCC Rebate Schedule. The Exchange proposes to no longer pay QCC Rebates on Professional-to-Professional orders.

QCC Orders are an order to buy or sell at least 1,000 contracts, or 10,000 contracts in the case of Mini Options.[13] These large-sized contingent orders are complex in nature and have a stock-tied component, which requires the option leg to be executed at the NBBO or better. The parties to a contingent trade are focused on the spread or ratio between the transaction prices for each of the component instruments (*i.e.*, the net price of the entire contingent trade), rather than on the absolute price of any single component. Today, Professional orders are treated similar to Customer orders with respect to QCC pricing because of the characteristics of the QCC Order which are described above. Today, Professional orders are not assessed a QCC Transaction Fee and no rebate is paid for Customer-to-Professional orders. The Exchange reasoned in a prior rule change[14] that "The differentiation between a Customer and Professional is not necessary with respect to QCC Orders because these orders are exempt from requirements regarding order exposure.[15] Further, QCC Orders are not executed pursuant to a priority scheme.[16] Also, as explained above, because of the size of the order, sophistication of the investor and complexity of the transaction, it is difficult to distinguish as between a Customer and Professional with respect to QCC Orders."[17]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A "Specialist" is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[4] The term "Market Maker" includes Registered Options Traders ("ROT"). *See* Exchange Rule 1014(b)(i) and (ii). A ROT includes a Streaming Quote Trader or "SQT," a Remote Streaming Quote Trader or "RSQT" and a Non-SQT, which by definition is neither a SQT nor a RSQT. A ROT is defined in Exchange Rule 1014(b) as a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. An SQT is an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. *See* Rule 1014(b)(ii)(A). An RSQT is an ROT that is a member affiliated with and Remote Streaming Quote Organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. *See* Rule 1014(b)(ii)(B).

[5] The term "Firm" applies to any transaction that is identified by a member or member organization for clearing in the Firm range at The Options Clearing Corporation.

[6] The term "Broker-Dealer" applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

[7] The term "Customer" applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation which is not for the account of a broker or dealer or for the account of a "Professional" (as that term is defined in Rule 1000(b)(14)).

[8] The term "Professional" means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Rule 1000(b)(14).

[9] A QCC Order is comprised of an originating order to buy or sell at least 1,000 contracts, or 10,000 contracts in the case of Mini Options, that is identified as being part of a qualified contingent trade, as that term is defined in Rule 1080(o)(3), coupled with a contra-side order or orders totaling an equal number of contracts. *See* Rule 1080(o).

[10] A Floor QCC Order must: (i) Be for at least 1,000 contracts; (ii) meet the six requirements of Rule 1080(o)(3) which are modeled on the QCT Exemption; (iii) be executed at a price at or between the National Best Bid and Offer ("NBBO"); and (iv) be rejected if a Customer order is resting on the Exchange book at the same price. In order to satisfy the 1,000-contract requirement, a Floor QCC Order must be for 1,000 contracts and could not be, for example, two 500-contract orders or two 500-contract legs.

[11] *See* Section II of the Pricing Schedule.

[12] *Id.*

[13] *See* notes 9 and 10 above.

The Exchange believes that treating Customer orders and Professional orders in a similar manner by also excluding Professional-to-Professional orders as eligible to receive a QCC Rebate will further remove any differentiation as between Professionals and Customers with respect to QCC pricing when transacting QCC Orders.

2. Statutory Basis

The proposal is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[19] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[20]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission*[21] the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[22] As the court emphasized, the Commission "intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost."[23]

Further, "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . . ."[24] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

It is reasonable to no longer pay a QCC Rebate on Professional-to-Professional orders because the distinction that necessitated the differentiation as between Customer and Professional orders is not meaningful with respect to QCC Orders. QCC Orders are orders to buy or sell at least 1,000 contracts, or 10,000 contracts in the case of Mini Options.[25] These large-sized contingent orders are complex in nature and have a stock-tied component, which requires the option leg to be executed at the NBBO or better. The parties to a contingent trade are focused on the spread or ratio between the transaction prices for each of the component instruments (*i.e.*, the net price of the entire contingent trade), rather than on the absolute price of any single component. Also, no Customer priority exists with respect to QCC Orders as with orders transacted within the order book or on the Floor. Today, Professional orders are not assessed a QCC Transaction Fee and are not eligible to receive a QCC Rebate for Customer-to-Professional orders. The Exchange believes that also excluding Professional-to-Professional orders from receiving a QCC Rebate will align Customer orders and Professional orders[26] with respect to QCC Pricing.

With respect to QCC transactions, the Commission noted in an order approving a qualified contingent cross order type on International Securities Exchange, LLC ("ISE") that "The Commission believes that those customers participating in QCC Orders will likely be sophisticated investors who should understand that, without a requirement of exposure for QCC Orders, their order would not be given an opportunity for price improvement on the Exchange. These customers should be able to assess whether the net prices they are receiving for their QCC Order are competitive, and who will have the ability to choose among broker-dealers if they believe the net price one broker-dealer provides is not competitive. Further, broker-dealers are subject to a duty of best execution for their customers' orders, and that duty does not change for QCC Orders."[27] The intent behind the Professional designation does not apply in the context of transacting QCC Orders, because of the size of the order, sophistication of the investor and complexity of the transaction, and therefore the pricing differentiation is not necessary. For these reasons, the Exchange believes that also excepting Professional-to-Professional orders from receiving a QCC Rebate will further remove any differentiation as between Professionals and Customers with respect to QCC pricing when transacting QCC Orders.

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[14] *See* SR–Phlx–2016–51 (not yet published).

[15] *See* Rule 1080(c)(ii)(C).

[16] By way of comparison, Customers receive priority over other market participants with respect to the execution of their order within the Exchange's order book or on the Floor.

[17] A Professional QCC Order would count toward the 390 orders in listed options per day. *See* note 8 above.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(4) and (5).

[20] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37497, 37499 (June 29, 2005) ("Regulation NMS Adopting Release") [sic].

[21] *See* Securities Exchange Act Release No. 51808 (June 9, 2005) [sic] at 534–535.

[22] *See* Securities Exchange Act Release No. 51808 (June 9, 2005) [sic] at 534.

[23] *See* Securities Exchange Act Release No. 51808 (June 9, 2005) [sic] at 537.

[24] *See* Securities Exchange Act Release No. 51808 (June 9, 2005) [sic] at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21).

[25] *See* notes 9 and 10 above.

[26] Professional-to-Customer orders are currently excluded from the QCC Rebate.

[27] *See* Securities and Exchange Act Release No. 63955 (February 24, 2011), 76 FR 11533 (March 2, 2011) (SR–ISE–2010–73).

It is equitable and not unfairly discriminatory to no longer pay a QCC Rebate on Professional-to-Professional orders because, today, Professionals are not assessed a QCC Transaction Fee and Customer-to-Professional orders are not eligible to receive a QCC Rebate. Excluding Professional-to-Professional orders from receiving a QCC Rebate aligns the treatment of Professional orders with Customer orders. As explained above, QCC Orders are distinctive as compared to transactions executed within the order book or on the Floor, which orders are subject to exposure and grant Customers priority over other market participants. The original purpose for the distinction between a Customer and a Professional was to prevent market professionals[28] with access to sophisticated trading systems that contain functionality not available to retail Customers, from taking advantage of Customer priority, where Customer orders are given execution priority over non-Customer orders. The Exchange noted at the time that it adopted the Professional designation that basing the Professional designation upon the average number of orders entered for a beneficial account was an appropriate objective approach that would reasonably distinguish such persons and entities from retail investors.[29]

With respect to distinguishing Professional orders from other Non-Customer participant orders, the Exchange notes that these other market participants, Specialists, Market Makers, Firms and Broker-Dealers, are distinct from a Professional for purposes of assessing QCC Transaction fees for the below reasons. With respect to Firms, these market participants are eligible for the Monthly Firm Fee Cap of $75,000 per month.[30] Firms are not subject to QCC Transaction Fees once the Monthly Firm Fee Cap is met in a given month. Specialists and Market Makers are eligible for the Monthly Market Maker Cap of $500,000 per month.[31] Specialists and Market Makers are not subject to QCC Transaction Fees once the Monthly Market Maker Cap is met in a given month. Professionals are not subject to similar caps. With respect to Broker-Dealers, the Exchange notes that members may choose to register as a Broker-Dealer. Market participants acting as agent, compared to market participants trading for their own account, are eligible to receive QCC Rebates. The Exchange pays market participants acting as agent for QCC Orders the QCC Rebates per the QCC Rebate Schedule.[32]

Further, the Exchange believes that distinguishing Professional orders from other Non-Customer orders is equitable and not unfairly discriminatory because QCC Orders are an exception to the general distinctions drawn as between Customer orders and Professional orders. Aside from the lack of priority for QCC Orders, the size of the order, sophistication of the investor and complexity of the transaction make it difficult to distinguish a Customer order from a Professional order. For purposes of the QCC Order, the Exchange believes that such distinction is not necessary.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The initial purpose of the distinction between a Customer and a Professional was to prevent market professionals with access to sophisticated trading systems that contain functionality not available to retail customers, from taking advantage of Customer priority, where Customer orders are given execution priority over Non-Customer orders. Professional orders are identified based upon the average number of orders entered for a beneficial account.[33]

QCC Orders are by definition large-sized contingent orders which have a stock-tied component. The parties to a contingent trade are focused on the spread or ratio between the transaction prices for each of the component instruments (*i.e.,* the net price of the entire contingent trade), rather than on the absolute price of any single component. Treating Customer orders and Professional orders in the same manner in terms of pricing with respect to QCC Orders does not provide any advantage to a Professional. The distinction does not create an opportunity to burden competition, for the reasons stated herein with respect to priority as well as the reasons below.

With respect to distinguishing Professional orders from other Non-Customer orders, the Exchange notes that Non-Customer orders are distinct from Professional orders for purposes of assessing QCC Transaction Fees. Firms are eligible for the Monthly Firm Fee Cap and not subject to QCC Transaction Fees once the Monthly Firm Fee Cap is met in a given month.[34] Specialists and Market Makers are eligible for the Monthly Market Maker Cap and not subject to QCC Transaction Fees once the Monthly Market Maker Cap is met in a given month.[35] Professionals are not subject to similar caps. With respect to Broker-Dealers, the Exchange notes that members may choose to register as a Broker-Dealer. These categories of market participants transact QCC Orders on an agency basis and are eligible to receive QCC Rebates. Excluding Professional-to-Professional orders does not impose an undue burden on intra-market competition because excluding these types of orders would further align the exclusion of Professional-to-Professional orders with the exclusion of Customer-to-Customer and Customer-to-Professional orders from receiving a QCC Rebate.

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[28] The Exchange noted in its filing that market professionals have access to functionality, including things such as continuously updated pricing models based upon real-time streaming data, access to multiple markets simultaneously and order and risk management tools. *See* Securities and Exchange Act Release No. 61426 (January 26, 2010), 75 FR 5360 (February 2, 2010) (SR–Phlx–2010–05).

[29] *See* Securities and Exchange Act Release No. 61426 (January 26, 2010), 75 FR 5360 (February 2, 2010) (SR–Phlx–2010–05).

[30] Firms are subject to a maximum fee of $75,000 ("Monthly Firm Fee Cap"). Firm Floor Option Transaction Charges and QCC Transaction Fees, in the aggregate, for one billing month will not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account. *See* Section II of the Pricing Schedule.

[31] Specialists and Market Makers are subject to a "Monthly Market Maker Cap" of $500,000 for: (i) Electronic Option Transaction Charges; and (ii) QCC Transaction Fees (as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e)). The trading activity of separate Specialist and Market Maker member organizations will be aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. *See* Section II of the Pricing Schedule.

[32] QCC Rebates are paid by volume. There are currently six tiers which pay a QCR Rebate between $0.00 and $0.11 per contract. *See* Section II of the Pricing Schedule. Of note, Firms may transact QCC Orders on an agency basis and be eligible for a QCC Rebate.

[33] *See* note 8.

[34] Firms acting as agents would be eligible to receive a QCC Rebate.

[35] Specialists and Market Makers trade only for their own account.

The Exchange's proposal does not place on undue burden on inter-market competition because the QCC order type is similar on other options exchanges[36] and these exchanges may also file to eliminate the distinction between Customers and Professionals for the QCC order type.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[37]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2016–52 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2016–52. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–Phlx–2016–52 and should be submitted on or before May 19, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Brent J. Fields,

Secretary.

[FR Doc. 2016–09898 Filed 4–27–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77694; File No. SR–BOX–2016–17]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule on the BOX Market LLC ("BOX") Options Facility

April 22, 2106.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 12, 2016, BOX Options Exchange LLC (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to amend the Fee Schedule to amend the BOX Volume Rebate ("BVR") in Section I.B.2 of the Fee Schedule on the BOX Market LLC ("BOX") options facility. While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on April 13, 2016. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule for trading on BOX. Specifically, the Exchange proposes to amend the BOX Volume Rebate ("BVR") in Section I.B.2 of the Fee Schedule.

Under the current BVR, the Exchange offers a tiered per contract rebate for all

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[36] *See* Chicago Board Options Exchange, Incorporated's Fees Schedule and Miami International Securities Exchange LLC's Pricing Schedule.

[37] 15 U.S.C. 78s(b)(3)(A)(ii).

[38] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

PIP Orders and COPIP Orders of 100 contracts and under. PIP and COPIP executions of 100 contracts and under are awarded a per contract rebate calculated on a monthly basis by totaling the Participant's PIP and COPIP volume submitted to BOX, relative to the total national Customer volume in multiply-listed options classes. The current per contract rebate for Participants in PIP and COPIP Transactions under the BVR is:

Tier	Percentage thresholds of national customer volume in multiply-listed options classes (monthly)	Per contract rebate (all account types)	
		PIP	COPIP
1	0.000% to 0.159%	($0.00)	($0.00)
2	0.160% to 0.339%	(0.04)	(0.02)
3	0.340% to 0.99%	(0.11)	(0.04)
4	1.00% and Above	(0.14)	(0.06)

The Exchange proposes to amend the BVR to apply the rebate to only those PIP Orders and COPIP Orders of 100 and under contracts that do not trade solely with their contra order. The percentage thresholds will continue to be based on all PIP and COPIP volume submitted to BOX, relative to the total national Customer volume in multiply-listed options classes.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes the proposed amendments to the BVR are reasonable, equitable and non-discriminatory. The BVR was adopted to attract Public Customer order flow to the Exchange by offering these Participants incentives to submit their PIP and COPIP Orders to the Exchange. The Exchange believes it is reasonable and appropriate to continue to provide incentives for Public Customers, which will result in greater liquidity and ultimately benefit all Participants trading on the Exchange. The Exchange believes providing a rebate to Participants that reach a certain volume threshold is equitable and non-discriminatory as the rebate will apply to all Participants uniformly.

The Exchange believes it is reasonable, equitable and non-discriminatory to apply the BVR to PIP and COPIP Orders that do not trade solely with their contra order. The BVR is intended to incentivize Participants to direct Customer order flow to the Exchange, and the Exchange believes incentives are not necessary for internalized PIP and COPIP Orders that only trade against their contra order. Additionally, other Exchanges also make this distinction when providing rebates for transactions in their auction mechanisms.[6]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed fee changes are reasonably designed to enhance competition in BOX transactions, particularly auction transactions.

The proposed rule change amends the BVR to only provide a rebate when the PIP or COPIP Order does not trade with its contra order. The Exchange does not believe that the proposed change burdens competition and will instead help promote competition by providing additional incentives for market participants to submit customer order flow to BOX and thus, create a greater opportunity for retail customers to receive additional price improvement.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act[7] and Rule 19b–4(f)(2) thereunder,[8] because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BOX–2016–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2016–17. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2016–17, and should be submitted on or before May 19, 2016.

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[5] 15 U.S.C. 78f(b)(4) and (5).

[6] *See* the International Securities Exchange ("ISE") Fee Schedule. Under the ISE Fee Schedule the initiator receives a "break-up" rebate only for contracts that are submitted to their auction mechanism that do not trade with their contra order.

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Brent J. Fields,

Secretary.

[FR Doc. 2016–09901 Filed 4–27–16; 8:45 am]

BILLING CODE 8011–01–P

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[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77691; File No. SR–BatsEDGX–2016–11]

Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees

April 22, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 11, 2016, Bats EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members[5] and non-members of the Exchange pursuant to EDGX Rules 15.1(a) and (c) ("Fee Schedule") to amend the Investor Depth Tier under footnote 1.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange determines the liquidity adding rebate that it will provide to Members using the Exchange's tiered pricing structure. Under such pricing structure, a Member will receive a rebate of anywhere between $0.0025 and $0.0034 per share executed, depending on the volume tier for which such Member qualifies. In January 2014, the Exchange adopted the Investor Depth Tier under footnote 1 of the Fee Schedule.[6] Members who qualify for the Investor Depth Tier receive a rebate of $0.0033 per share where they: (i) Add an ADV[7] of at least 0.15% of the TCV;[8] (ii) have an "added liquidity" as a percentage of "added plus removed liquidity" of at least 85%; and (3) add an ADV of at least 500,000 share as Non-displayed[9] orders that yield fee code HA.[10]

The Exchange now proposes to amend the Investor Depth Tier to: (i) Decrease the Member's added ADV threshold in Non-Displayed orders from 500,000 shares to 400,000 shares; and (ii) permit a Member's added ADV to include Non-Displayed orders that yield fee codes HI and/or MM, in addition to fee code HA. Fee code HI is appended to Non-Displayed orders that receive price improvement and add liquidity, and fee code MM is appended to Non-Displayed orders that add liquidity using MidPoint Peg Orders.[11] Lowering the Member's ADV threshold would encourage Members who cannot meet the tier's current criteria to increase their volume on the Exchange in order to achieve the lower threshold. Also, permitting Non-Displayed orders that yield fee codes HI and/or MM, in addition to fee code HA, to be included as part of the Member's ADV would enable Members that utilize other types of Non-Displayed orders to be included as part of the Members added ADV for purposes to satisfying the Investor Depth Tier. In addition, lowering the ADV threshold, combined with the additional fee codes, necessary to achieve the tier should encourage Members to add displayed liquidity, as only the displayed liquidity in this tier is awarded the enhanced rebate. The remainder of the criteria required to meet the tier as well as the rate offered by the tier would remain unchanged.

The Exchange proposes to implement this amendment to its Fee Schedule immediately.[12]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[13] in general, and furthers the objectives of Section 6(b)(4),[14] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule changes reflect a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed amendments to the Investor Depth Tier are equitable and non-discriminatory in they would apply uniformly to all Members. The Exchange believes the rate remains competitive with those charged by other venues and, therefore, reasonable and equitably allocated to Members.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The term "Member" is defined as "any registered broker or dealer that has been admitted to membership in the Exchange." *See* Exchange Rule 1.5(n).

[6] *See* Securities Exchange Act Release No. 76816 (January 4, 2016, 81 FR 987 (January 8, 2016) (SR–EDGX–2015–67).

[7] As defined in the Exchange's Fee Schedule *available at http://batstrading.com/support/fee_schedule/edgx/.*

[8] *Id.*

[9] *See* Exchange Rule 11.6(e)(2) for the definition of Non-Displayed.

[10] Fee code HA is appended to Non-displayed orders that add liquidity on the Exchange. *See* the Exchange's Fee Schedule *available at http://batstrading.com/support/fee_schedule/edgx/.*

[11] *See* Exchange Rule 11.8(d) for a description of MidPoint Peg orders.

[12] The Exchange initially filed the proposed change on April 1, 2016 (SR–BatsEDGX–2016–06). On April 11, 2016, the Exchange withdrew SR–BatsEDGX–2016–06 and submitted this filing).

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(4).

Volume-based rebates such as that proposed herein have been widely adopted by equities exchanges and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to: (i) The value to an exchange's market quality; (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns; and (iii) introduction of higher volumes of orders into the price and volume discovery processes. The Exchange believes that the proposal is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and rebates because it will provide Members with an additional incentive to reach certain thresholds on the Exchange.

In particular, the Exchange believes the amendments to the Investor Depth Tier are a reasonable means to encourage Members to increase their liquidity on the Exchange. The Exchange further believes that the amendments to the Investor Depth Tier represent an equitable allocation of reasonable dues, fees, and other charges because the thresholds necessary to achieve the tier continue to encourage Members to add displayed liquidity to the EDGX Book[15] each month, as only the displayed liquidity in this tier is awarded the rebate of $0.0033 per share. The amendments to the Investor Depth Tier also continue to recognizes the contribution that non-displayed liquidity provides to the marketplace, including: (i) Adding needed depth to the EDGX market; (ii) providing price support/depth of liquidity; and (iii) increasing diversity of liquidity to EDGX. Including Non-Displayed orders that yield fee codes HI and/or MM, in addition to fee code HA, would enable Members that utilize other types of Non-Displayed orders to be included as part of the Member's added ADV for purposes to satisfying the Investor Depth Tier. In addition, fee code MM and HI are both yielded on Non-Displayed orders that add liquidity—fee code MM for MidPoint Peg Orders and fee code HI for Non-Displayed orders that receive price improvement. The Exchange believes that Members utilizing Non-Displayed orders that add liquidity to the EDGX Book provide increased opportunities for Members to receive the benefit of price improvement, and the addition of fee codes HI and MM is a reasonable means by which to encourage the use of such orders. Combined with the addition of fee codes HI and MM, lowering the ADV threshold necessary to achieve the tier should encourage Members to add displayed liquidity, as only the displayed liquidity in this tier is awarded the enhanced rebate. The increased liquidity benefits all investors by deepening EDGX's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection.

The Exchange also notes that the criteria and rebate under the Investor Depth Tier continues to be equitable and reasonable as compared to other tiers offered by the Exchange. For example, under the Investor Tier Members may receive a rebate of $0.0032 per share where they (i) add an ADV of at least 0.15% of the TCV; and (ii) have an "added liquidity" as a percentage of "added plus removed liquidity" of at least 85%. These thresholds mirror the first two thresholds required to meet the Investor Depth Tier. However, in order to achieve the higher rebate of $0.0033 per share provided by the amended Investor Depth Tier, Members must also add an ADV of at least 400,000 share as Non-displayed orders that yield fee codes HA, HI, and/or MM. Therefore, the Exchange believes the Investor Depth Tier continues to be consistent with Section 6(b)(4)[16] of the Act as the more stringent criteria correlates with the tier's higher rebate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe its proposed amendment to its Fee Schedule would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

The Exchange does not believe that the amended tier would burden competition, but instead, enhances competition, as it is intended to increase the competitiveness of and draw additional volume to the Exchange. As stated above, the Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee structures to be unreasonable or excessive. The proposed change is generally intended to draw additional liquidity to the Exchange. The Exchange does not believe the amended tier would burden intramarket competition as it would apply to all Members uniformly.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[17] and paragraph (f) of Rule 19b–4 thereunder.[18] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

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[15] The EDGX Book is the System's electronic file of orders. *See* Exchange Rule 1.5(d).

[16] 15 U.S.C. 78f(b)(4).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BatsEDGX–2016–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street Ne., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsEDGX–2016–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsEDGX–2016–11, and should be submitted on or before May 19, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Brent J. Fields,

Secretary.

[FR Doc. 2016–09899 Filed 4–27–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77495; File No. SR–NASDAQ–2016–046]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Fees Under Rules 7015(b) and (g)

April 1, 2016.

Correction

In notice document 2016–07937 beginning on page 20426 in the issue of Thursday, April 7, 2016, make the following correction:

1. On page 20428, in the second column, in the 27th line, "April 27, 2016" should read "April 28, 2016."

[FR Doc. C1–2016–07937 Filed 4–27–16; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77687; File No. SR–Phlx–2016–48]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Rule 606

April 22, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on April 7, 2016, NASDAQ PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to amend Rule 606 (Communications and Equipment). The proposed amendment is described further below.[3]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 606 to: (1) Add language that would allow the Exchange to limit the use of a communication device under certain circumstances; (2) Clarify the process for changing registration of user, and delete obsolete language regarding wattage and add language regarding Web-based and open microphone ("open mic")[4] communication applications; (3) Clarify [sic] language regarding call forwarding and open mic; (4) Delete obsolete language regarding stock execution clerks and in-house phone use; and (5) Add [sic] language regarding records.

Rule 606, which applies to the use of electronic communication devices on the options floor of the Exchange ("Options Floor"), has been around for more than fifty years,[5] at which time Exchange options trading was strictly on-floor open outcry through specialists. Exchange options trading has, since that time, developed into a robust hybrid system that is currently largely electronic and off-floor[6] but continues to have an on-floor specialist[7] and an open outcry trading floor. The Exchange is now updating and modernizing Rule 606 as discussed below.[8]

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[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] References to rules are, unless otherwise stated, to the rules of the Exchange.

[4] Open mic allows listeners other than the intended party on the other end of a line (*e.g.,* telephone) to listen to the conversation.

[5] Since the inception of Rule 606 in 1964, the rule was amended about ten times, with the last substantive amendment in 2002. *See* Securities Exchange Act Release No. 49098 (February 13, 2002), 67 FR 8053 (February 21, 2002) (SR–Phlx–2001–109) (notice of filing and immediate effectiveness regarding tethered communication devices). *See also* Securities Exchange Act Release Nos. 49098 (January 16, 2004), 69 FR 3974 (January 27, 2004) (SR–Phlx–2003–73) (approval order); 54538 (September 28, 2006), 71 FR 59184 (October 6, 2006) (SR–Phlx–2006–43) (approval order); 59924 (May 14, 2009), 74 FR 23759 (May 20, 2009) (Phlx–2009–23) (approval order); and 64338 (April 25, 2011), 76 FR 24069 (April 29, 2011) (SR–Phlx–2011–13) (approval order) (these last four proposals made non-substantive technical or conforming changes to Rule 606).

First, currently Rule 606 states in section (d) that the Exchange may remove any telephonic, electronic, or wireless equipment that violates subsection (b)(2) from any Exchange facility.[9] The Exchange proposes language in section (d) of Rule 606 to indicate when the Exchange may deny, limit, or revoke the use of any communication device under certain circumstances.

Specifically, the Exchange proposes language in section (d) to state that the Exchange may deny, limit, or revoke the use of any communication device: [sic] whenever it determines that use of such communication device: (1) Interferes with normal operation of the Exchange's own systems or facilities or with the Exchange's regulatory duties; (2) is inconsistent with the public interest, the protection of investors or just and equitable principles of trade; or (3) interferes with the obligations of a member or member organization to fulfill its duties under, or is used to facilitate any violation of, the Securities Exchange Act or rules thereunder, or Exchange rules. This gives the Exchange the opportunity to limit the use of a communication device that interferes or is inconsistent with three specified crucial areas as proposed in the rule. The proposed section (d) provision is similar in relevant part to a provision in the communication rule of another options Exchange, Chicago Board Options Exchange ("CBOE"),[10] and is similar to certain provisions of other Exchange rules.[11]

Second, Rule 606 currently states in Section (e)(1) regarding registration that members and member organizations must register, prior to use, any new telephone to be used on the Options Floor. Each phone registered with the Exchange must be registered by category of user; and if there is a change in the category of any user, the phone must be re-registered with the Exchange.[12] The Exchange now proposes to update the process for changing registration of user. Specifically, the Exchange proposes to change the requirement in Section (e)(1) that the phone must be re-registered with the requirement that the member or member organization must immediately inform the Exchange in writing on the same day as when the change occurs.

The Exchange believes that the proposed updated procedure is better because while the rule currently does not indicate a timeline when [a phone must be re-registered, the proposed rule change requires written notification to the Exchange on the same day as when the change occurs.

Rule 606 currently states in Section (e)(2) regarding capacity and functionality that no wireless telephone used on the Options Floor may have an output greater than one watt. No person on the Options Floor may use any device for the purpose of maintaining an open line of continuous communication whereby a person not located in the trading crowd may continuously monitor the activities in the trading crowd. This prohibition covers intercoms, walkie-talkies, and any similar devices. Speed-dialing features are permitted on any member telephone.

The Exchange is now proposing to delete obsolete language regarding wattage and to add new language regarding web-based and open mic communication applications.[13] Specifically, the Exchange is proposing to delete language in in Section (e)(2) that no wireless telephone used on the Options Floor may have an output greater than one watt. While the power limitation may have made sense when wireless was just initiated as a new technology on the Options Floor,[14] this wattage limitation provision is obsolete and no longer needed. In light of the current development of technology, the one watt power limitation provision is no longer needed to minimize the possibility of radio frequency or other interference with the systems of the Exchange of those of other members.

Rule 606 currently states in Section (e)(2) no person on the Options Floor may use any device for the purpose of maintaining an open line of continuous communication whereby a person not located in the trading crowd may continuously monitor the activities in the trading crowd; and that this prohibition covers intercoms, walkie-talkies, and any similar devices.[15] Because of the advancement of technology and proliferation of the web, the Exchange is proposing in Section (e)(2) to also add Web-based, as well as open mic, communication applications.

Third, Rule 606 currently states in Section (e)(4) regarding brokers that work on the Options Floor ("Floor Brokers")[16] [sic] may use cellular and cordless telephones, but only to communicate with persons located on the Options Floor. These telephones may not include a call forwarding feature.[17] Because of the availability of call forwarding and open mic on virtually all wireless phones, the Exchange is proposing to update this provision. Specifically, the Exchange is proposing in Section (e)(4) to state that telephones used by Floor Brokers may not use a call forwarding or open mic feature on the Options Floor; and that if a call forwarding or open mic feature is available on the phone then such feature must be disengaged at all times when the phone is on the Options Floor.

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[6] Electronic traders include market makers that are SQTs, RSQTs, and off-floor specialists ("Remote Specialists"). *See* Rules 1014(b)(ii)(A), 1014(b)(ii)(B), and 1020.

[7] Unlike specialists, Remote Specialists do not have a physical presence on the floor of the Exchange. Rule 1020.

[8] While the vast majority of options-related rules are found in Rule 1000 and higher (with option index rules found in Rule 1000A and higher), some of the older options-related rules are, as discussed, numbered below 1000.

[9] Section (b)(2) of Rule 606 states: (2) No member, member organization or person associated with a member organization shall: (i) Establish or maintain any telephonic, electronic or wireless transmitting system or device, including related antennas, on the Options Floor or (ii) operate any other equipment on the Options Floor that creates radio frequency (RF) or other interference with the systems of the Exchange or other members.

[10] Proposed Rule 606(d)(1) states: The Exchange may deny, limit or revoke the use of any communication device whenever it determines that use of such communication device: (1) Interferes with normal operation of the Exchange's own systems or facilities or with the Exchange's regulatory duties, (2) is inconsistent with the public interest, the protection of investors or just and equitable principles of trade, or (3) interferes with the obligations of a member or member organization to fulfill its duties under, or is used to facilitate any violation of, the Securities Exchange Act or rules thereunder, or Exchange rules. CBOE Rule 6.23(b) states: The Exchange may deny, limit or revoke the use of any communication device whenever it determines that use of such communication device: (1) Interferes with the normal operation of the Exchange's own systems or facilities or with the Exchange's regulatory duties, (2) is inconsistent with the public interest, the protection of investors or just and equitable principles of trade, or (3) interferes with the obligations of a Trading Permit Holder to fulfill its duties under, or is used to facilitate any violation of, the Securities Exchange Act or rules thereunder, or Exchange rules.

[11] *See, e.g.,* Rule 1005 and Rule 1006 (provisions regarding advisable in the public interest or for the protection of investors).

[12] Such users can be, for example, floor broker, specialist, or registered options trader. The users that have originally registered and still remain on the Exchange floor have not changed their category of user.

[13] These can be, for example, instant messaging, chat, or Skype.

[14] *See* Securities Exchange Act Release No. 43972 (February 15, 2001), 66 FR 12579 (February 27, 2001) (SR–Phlx–00–48) (approval order). The order notes that the purpose of the one watt power limitation was to minimize the possibility of radio frequency or other interference with the systems of the Exchange of those of other members.

[15] For clarity, the Exchange is proposing to state that the prohibition in Section (e)(2) covers, "but is not limited to," the noted devices.

[16] A "Floor Broker" is defined in Rule 1060 as "[a]n individual who is registered with the Exchange for the purpose, while on the Options Floor, of accepting and handling options orders."

[17] Headsets are permitted for Floor Brokers, but if the Exchange determines that a Floor Broker is maintaining a continuous open line through the use of a headset, the Floor Broker will be prohibited from future use of any headset for a length of time to be determined by the Exchange. Rule 606(e)(4)(a).

Fourth, Rule 606 currently discusses in Section (e)(5) phone use by stock execution clerks; and in Section (e)(6) the use of general access in-house phones. Stock execution clerks and general access in-house phones no longer exist and these terms are obsolete. Therefore, the Exchange specifically proposes to delete reference [sic] to these obsolete terms from Sections (e)(5) and (e)(6).

Fifth, Rule 606 currently discusses in Section (e)(7) that members must maintain their cellular or cordless telephone records, including logs of calls placed, for a period of not less than one year. The Exchange reserves the right to inspect and/or examine such telephone records. The Exchange proposes to modernize this requirement.

Specifically, the Exchange proposes in Section (e)(7) to state that members must maintain their logs of calls and chats, including cellular or cordless telephone records and logs of calls placed, for a period of not less than three years, the first two years in an easily accessible place. The Exchange believes that this proposed change will help with the Exchange's surveillance function. The proposed section (e)(7) provision is similar in relevant part to a provision in the communication rule of another options exchange, CBOE,[18] and to other Exchange record-keeping rules.[19]

Finally, in terms of housekeeping changes in Rule 606(e)(4)(b) the Exchange is proposing to substitute the word "orders" for "others" so that the section reads properly.

The Exchange believes that the proposed changes to Rules 606 will make it clearer and better.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[20] in general, and furthers the objectives of Section 6(b)(5) of the Act,[21] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by proposing to make several changes in Rule 606.

The Exchange believes that the rule change will promote just and equitable principles of trade by making the rules clearer and easier to use. The Exchange is proposing in Rule 606(d) to add language that would allow the Exchange to limit the use of a communication device when such device interferes with normal operation of the Exchange's own systems or facilities or with the Exchange's regulatory duties, is inconsistent with the public interest, the protection of investors or just and equitable principles of trade, or interferes with the obligations of a member or member organization to fulfill its duties under, or is used to facilitate any violation of, the Securities Exchange Act or rules thereunder, or Exchange rules. The proposed section (d) provision is, as discussed, practically verbatim like a provision in the communication rule of another options Exchange, CBOE.

The Exchange is proposing in Rule 606(e)(2) to delete language regarding wattage that is obsolete and no longer needed.

The Exchange is also proposing in Rule 606(e)(5) to delete obsolete language regarding stock execution clerks and in-house phone use, as these are not present on the Options Floor. The Exchange believes that the rule change will serve to protect investors and the public by making the rule tighter and better for surveillance regarding communication devices.

The Exchange is proposing language in Rule 606(e)(1) to clarify the process for changing registration of user so that, instead or having to re-register when user status changes, the member or member organization must immediately inform the Exchange in writing on the same day as when the change occurs.

The Exchange is proposing in Rule 606(e)(2) to add language regarding web-based and open mic communication applications because of the considerable advancement of technology and proliferation of the web and the absence of such language in the rule.

The Exchange is proposing in Rule 606(e)(4) to state, instead of telephones may not include a call forwarding feature, that Floor Brokers may not use a call forwarding or open mic feature on the Options Floor and that the call forwarding or open mic feature must be disengaged at all times when the phone is on the Options Floor.

The Exchange is also proposing in Rule 606(e)(7) to modernize the records retention requirement for telephone records so that, similar in relevant part to the requirement of another exchange, CBOE, and to other Exchange rules, and also to help with the Exchange's surveillance function, members must maintain logs of calls and chats for a period of not less than three years, the first two years in an easily accessible place.

The Exchange believes that the proposed changes to Rules 606 will make it clearer and better and therefore beneficial to market participants. The Exchange believes also that the changes proposed to Rule 606 will protect investors and the public interest. As the Exchange has noted, the changes remove references to obsolete and unused concepts that are no longer needed, strengthen features and add features of the rule to make it more current, and strengthen the record retention requirements. Such proposed changes are in the public interest, and continue to serve to protect investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. While the Exchange does not believe that the proposed non-controversial change is a burden on competition, or is competitive in nature, the Exchange believes that clearer, updated rules that do not refer to obsolete language and are in line with other rule concepts are always beneficial to market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[22] and Rule 19b–4(f)(6) thereunder.

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[18] Proposed Rule 606(e)(7) states: Members must maintain logs of calls and chats, including their cellular or cordless telephone records and logs of calls placed, for a period of not less than three years, the first two years in an easily accessible place. The Exchange reserves the right to inspect and/or examine such telephone records. CBOE Rule 6.23(g) states: Trading Permit Holders must maintain records of the use of communication devices, including, but not limited to, logs of calls placed; emails; and chats, for a period of not less than three years, the first two years in an easily accessible place. The Exchange reserves the right to inspect such records pursuant to CBOE Rule 17.2.

[19] *See* Rule 616 (electronic filing requirements for uniform forms) and Rule 605 (advertisements, market letters, research reports and sales literature). *See also* Rule 1049 (communications to customers).

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

Phlx has requested that the Commission waive the 30-day operative delay so that it can expeditiously eliminate references to obsolete concepts and modernize Rule 606 to take into account current technology. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public. The Commission notes that, among other things, the proposed rule change will require Phlx members to maintain logs of calls and chats, including their cellular or cordless telephone records and logs of calls placed, for a period of not less than three years, the first two years in an easily accessible place. The waiver of the operative delay will allow Phlx to implement its maintenance and use of records rules, along with the above-discussed requirements regarding communication equipment, without undue delay. Therefore, the Commission designates the proposal operative upon filing.[23]

At any time within 60 days of the filing of this proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2016–48 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2016–48. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2016–48 and should be submitted on or before May 19, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Brent J. Fields,

Secretary.

[FR Doc. 2016–09896 Filed 4–27–16; 8:45 am]

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[22] 15 U.S.C. 78s(b)(3)(A).

[23] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 17 CFR 200.30–3(a)(12) and (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77688; File No. SR–NASDAQ–2016–030]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Listing and Trading of the Shares of the Elkhorn Dorsey Wright Commodity Rotation Portfolio of Elkhorn ETF Trust

April 22, 2016.

I. Introduction

On February 26, 2016, The NASDAQ Stock Market LLC ("Exchange" or "Nasdaq") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares ("Shares") of the Elkhorn Dorsey Wright Commodity Rotation Portfolio ("Fund"). The proposed rule change was published for comment in the **Federal Register** on March 16, 2016.[3] The Commission received one comment on the proposal.[4] On April 15, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.[5] This order

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77338 (March 10, 2016), 81 FR 14142 ("Notice").

[4] *See* Letter from Anonymous to the Commission, dated April 8, 2016 ("Anonymous Letter"), *available at: http://www.sec.gov/comments/sr-nasdaq-2016-030/nasdaq2016030-1.htm* (commenting in favor of the Exchange's proposal).

[5] In Amendment No. 1, which amended and replaced the proposed rule change in its entirety, the Exchange made the following clarifications: (1) The Fund may invest in commercial paper only if it has received the highest rating from at least one nationally recognized statistical rating organization or, if unrated, has been judged by the Adviser (as defined herein) and/or a Sub-Adviser (as defined herein) to be of comparable quality; (2) the Fund and the Subsidiary (as defined herein) will not invest in leveraged or inverse leveraged securities of investment companies; (3) the commodity-linked instruments in which the Fund invests will be listed and traded in the U.S. on registered exchanges; (4) with respect to the futures contracts and exchange-traded options on futures contracts in which the Subsidiary invests, not more than 10% of the weight (to be calculated as the value of the contract divided by the total absolute notional value of the Subsidiary's futures and options contracts) of the futures and options contracts held by the Subsidiary in the aggregate shall consist of instruments whose principal trading market (a) is not a member of the Intermarket Surveillance Group ("ISG") or (b) is a market with which the Exchange does not have a comprehensive surveillance sharing agreement, provided that, so long as the Exchange may obtain market surveillance information with respect to transactions occurring on the Commodity Exchange pursuant to the ISG memberships of the Chicago Mercantile Exchange, the Chicago Board of

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grants approval of the proposed rule change, as modified by Amendment No. 1 thereto.

II. Exchange's Description of the Proposed Rule Change

The Exchange proposes to list and trade the Shares of the Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by the Elkhorn ETF Trust ("Trust"), which was established as a Massachusetts business trust on December 12, 2013.[6] Elkhorn Investments, LLC will be the investment adviser ("Adviser") to the Fund. It is currently anticipated that day-to-day portfolio management for the Fund will be provided by the Adviser. However, the Fund and the Adviser may contract with an investment sub-adviser ("Sub-Adviser") to provide day-to-day portfolio management for the Fund. ALPS Distributors, Inc. ("Distributor") will be the principal underwriter and distributor of the Fund's Shares. The Fund will contract with unaffiliated third parties to provide administrative, custodial and transfer agency services to the Fund. The Exchange represents that the Adviser is not a broker-dealer, although it is affiliated with a broker-dealer, and it has implemented a firewall with respect to its broker-dealer affiliate regarding access to information concerning the composition of, and changes to, the portfolio.[7]

The Exchange has made the following representations and statements describing the Fund and the Fund's investment strategies, including the Fund's portfolio holdings and investment restrictions.[8]

A. Exchange's Description of the Fund's Investments

According to the Exchange, the Fund's investment objective will be to provide total return which exceeds that of the DWA Commodity Rotation Index ("Benchmark").[9] The Fund will seek excess return above the Benchmark solely through the active management of a short duration portfolio of highly liquid, high quality bonds.

The Fund will be an actively-managed exchange-traded fund ("ETF") that seeks to achieve its investment objective by, under normal market conditions,[10] investing in exchange-traded commodity futures contracts, exchange-cleared and non-exchange-cleared swaps,[11] exchange-traded options on futures contracts, and exchange-traded commodity-linked instruments[12] (collectively, "Commodities") through a wholly-owned subsidiary controlled by the Fund and organized under the laws of the Cayman Islands ("Subsidiary"), thereby obtaining exposure to the commodities markets.

The Fund's Commodities investments, in part, will be comprised of exchange-traded futures contracts on commodities that comprise the Benchmark. Although the Fund, through the Subsidiary, will generally hold many of the futures contracts included in the Benchmark, the Fund and the Subsidiary will be actively managed and will not be obligated to invest in all the futures contracts on commodities that comprise the Benchmark. In addition, with respect to investments in exchange-traded futures contracts, the Fund and the Subsidiary will not be obligated to invest in the same amount or proportion as the Benchmark, or be obligated to track the performance of the Benchmark. In addition to exchange-traded futures contracts, the Fund's Commodities investments will also be comprised of exchange-cleared and non-exchange-cleared swaps on commodities, exchange-traded options on futures contracts that provide exposure to the investment returns of the commodities markets, and exchange-traded commodity-linked instruments, without investing directly in physical commodities. The Fund will invest in Commodities through investments in the Subsidiary and will not invest directly in physical commodities. The Fund's investment in the Subsidiary may not exceed 25% of the Fund's total assets.

In addition to Commodities, the Fund may invest its assets in (1) the following short-term debt instruments:[13] fixed rate and floating rate U.S. government securities, including bills, notes and bonds differing as to maturity and rates

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Trade and the New York Mercantile Exchange, futures and options contracts whose principal trading market is the Commodity Exchange shall not be subject to the prohibition in (a); (5) all statements and representations made in the proposal regarding the description of the portfolio, limitations on portfolio holdings or reference assets, or the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange; (6) the issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements; (7) pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements; and (8) if the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series. Amendment No. 1 also corrects a typographical error and makes other edits of a technical nature. Because Amendment No. 1 to the proposed rule change does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 1 is not subject to notice and comment (Amendment No. 1 to the proposed rule change is available at: *http://www.sec.gov/comments/sr-nasdaq-2016-030/nasdaq2016030-2.pdf*).

[6] The Exchange represents that the Trust is registered under the Investment Company Act of 1940 ("1940 Act"). *See* Registration Statement on Form N–1A for the Trust dated February 18, 2016 (File Nos. 333–201473 and 811–22926) ("Registration Statement"). The Exchange further states that the Trust has obtained certain exemptive relief under the 1940 Act (File No. 812–14262).

[7] *See* Nasdaq Rule 5735(g). The Exchange further represents that, in the event (a) the Adviser or a Sub-Adviser becomes, or becomes newly affiliated with, a broker-dealer or registers as a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a firewall with respect to its relevant personnel or broker-dealer affiliate, as applicable, regarding access to information concerning the composition of, and changes to, the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the portfolio.

[8] The Commission notes that additional information regarding the Fund, the Trust, the Subsidiary (as defined herein), and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, calculation of net asset value ("NAV"), distributions, and taxes, among other things, can be found in the Notice and the Registration Statement, as applicable. *See* Notice and Registration Statement, *supra* notes 3 and 6, respectively.

[9] The Benchmark is developed, maintained, and sponsored by Dorsey, Wright & Associates, LLC.

[10] The term "under normal market conditions" includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income markets, futures markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[11] Investments in non-exchange-cleared swaps (through the Subsidiary) will not represent more than 20% of the Fund's net assets. When investing in non-exchange-cleared swaps, the Subsidiary (as defined herein) will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. The Adviser and/or a Sub-Adviser will evaluate the creditworthiness of counterparties on an ongoing basis. In addition to information provided by credit agencies, the Adviser's and/or a Sub-Adviser's analysis will evaluate each approved counterparty using various methods of analysis, and may consider such factors as the counterparty's liquidity, its reputation, the Adviser's and/or Sub-Adviser's past experience with the counterparty, its known disciplinary history, and its share of market participation.

[12] Exchange-traded commodity-linked instruments include: (1) ETFs that provide exposure to commodities, as would be listed under Nasdaq Rules 5705 and 5735; and (2) pooled investment vehicles that invest primarily in commodities and commodity-linked instruments, as would be listed under Nasdaq Rules 5710 and 5711(b), (d), (f), (g), (h), (i) and (j).

[13] Short-term debt instruments are issued by issuers having a long-term debt rating of at least A by Standard & Poor's Ratings Services, Moody's Investors Service, Inc., or Fitch Ratings, and have a maturity of one year or less.

of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. government agencies or instrumentalities;[14] certificates of deposit issued against funds deposited in a bank or savings and loan association; bankers' acceptances, which are short-term credit instruments used to finance commercial transactions; repurchase agreements,[15] which involve purchases of debt securities; bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; and commercial paper, which are short-term unsecured promissory notes (collectively, "Short-Term Debt Instruments");[16] (2) corporate debt obligations;[17] (3) money market instruments;[18] (4) investment companies (other than those that are commodity-linked instruments),[19] including both exchange-traded and non-exchange-traded investment companies, that provide exposure to (a) commodities, (b) equity securities, and (c) fixed income securities, to the extent permitted under the 1940 Act and any applicable exemptive relief;[20] and (5) cash and other cash equivalents (collectively, "Other Investments"). The Fund will use the Other Investments as investments, to provide liquidity, and to collateralize the Subsidiary's commodity exposure on a day-to-day basis.

The Fund's investment in the Subsidiary will be designed to help the Fund achieve exposure to commodity returns in a manner consistent with the federal tax requirements applicable to the Fund and other regulated investment companies. The Fund intends to qualify for and to elect to be treated as a separate regulated investment company under Subchapter M of the Internal Revenue Code.

B. Exchange's Description of the Subsidiary's Investments

The Subsidiary will generally seek to make investments in Commodities, and its portfolio will be managed by the Adviser or a Sub-Adviser.[21] The Adviser or a Sub-Adviser will use its discretion to determine the percentage of the Fund's assets allocated to the Commodities held by the Subsidiary that will be invested in exchange-traded commodity futures contracts, exchange-cleared and non-exchange-cleared swaps, exchange-traded options on futures contracts, and exchange-traded commodity-linked instruments. The Subsidiary will have the same investment objective as the Fund, but unlike the Fund, it may invest without limitation in Commodities.

In addition to investing in Commodities, the Subsidiary, like the Fund, may invest in Other Investments (*e.g.,* as investments or to serve as margin or collateral or otherwise support the Subsidiary's positions in Commodities). The Subsidiary's investments will provide the Fund with exposure to domestic and international markets.[22]

C. Exchange's Description of Investment Restrictions

While the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will be consistent with the Fund's investment objective and will not be used to seek performance that is the multiple or inverse multiple (*i.e.,* 2X and −3X) of an index. In addition, the Fund may not invest more than 25% of the value of its total assets in securities of issuers in any one industry or group of industries. This restriction will not apply to obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities, or securities of other investment companies.

The Subsidiary's shares will be offered only to the Fund and the Fund will not sell shares of the Subsidiary to other investors. The Fund and the Subsidiary will not invest in any non-U.S. equity securities (other than shares of the Subsidiary). The Fund will not purchase securities of open-end or closed-end investment companies except in compliance with the 1940 Act or any applicable exemptive relief. In addition, the Exchange represents that, with respect to the futures contracts and exchange-traded options on futures contracts in which the Subsidiary invests, not more than 10% of the weight (to be calculated as the value of the contract divided by the total absolute notional value of the Subsidiary's futures and options contracts) of the futures and options contracts held by the Subsidiary in the aggregate shall consist of instruments whose principal trading market (a) is not a member of ISG or (b) is a market with which the Exchange does not have a comprehensive surveillance sharing agreement; provided that, so long as the Exchange may obtain market surveillance information with respect to transactions occurring on the Commodity Exchange pursuant to the ISG memberships of the Chicago Mercantile Exchange, the Chicago Board of Trade, and the New York Mercantile Exchange, futures and options contracts whose principal trading market is the Commodity Exchange will not be subject to the limitation in (a) above. Investments in non-exchange-cleared swaps (through the Subsidiary) will not represent more than 20% of the Fund's net assets.

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[14] Such securities will include securities that are issued or guaranteed by the U.S. Treasury, by various agencies of the U.S. government, or by various instrumentalities, which have been established or sponsored by the U.S. government. U.S. Treasury obligations are backed by the "full faith and credit" of the U.S. government. Securities issued or guaranteed by federal agencies and U.S. government-sponsored instrumentalities may or may not be backed by the full faith and credit of the U.S. government.

[15] According to the Exchange, the Fund intends to enter into repurchase agreements only with financial institutions and dealers believed by the Adviser and/or a Sub-Adviser to present minimal credit risks in accordance with criteria approved by the Board of Trustees of the Trust ("Board"). The Adviser and/or a Sub-Adviser will review and monitor the creditworthiness of such institutions. The Adviser and/or a Sub-Adviser will monitor the value of the collateral at the time the transaction is entered into and at all times during the term of the repurchase agreement.

[16] The Fund may invest in commercial paper only if it has received the highest rating from at least one nationally recognized statistical rating organization or, if unrated, has been judged by the Adviser and/or a Sub-Adviser to be of comparable quality.

[17] At least 75% of corporate debt obligations will have a minimum principal amount outstanding of $100 million or more.

[18] For the Fund's purposes, money market instruments will include only the following instruments: short-term, high-quality securities issued or guaranteed by non-U.S. governments, agencies and instrumentalities; non-convertible corporate debt securities with remaining maturities of not more than 397 days that satisfy ratings requirements under Rule 2a-7 under the 1940 Act; and money market mutual funds.

[19] According to the Exchange, the Fund may invest in the securities of certain other investment companies in excess of the limits imposed under the 1940 Act pursuant to an exemptive order obtained by the Trust and the Adviser from the Commission. The exchange-traded investment companies in which the Fund may invest include Index Fund Shares (as described in Nasdaq Rule 5705), Portfolio Depository Receipts (as described in Nasdaq Rule 5705), and Managed Fund Shares (as described in Nasdaq Rule 5735). The non-exchange-traded investment companies in which the Fund may invest include all non-exchange-traded investment companies that are not money market instruments, as described above. While the Fund and the Subsidiary may invest in inverse commodity-linked instruments or securities of investment companies, the Fund and the Subsidiary will not invest in leveraged or inverse leveraged (*e.g.,* 2X or −3X) commodity-linked instruments or securities of investment companies.

[20] The exchange-traded investment companies and commodity-linked instruments in which the Fund invests will be listed and traded in the U.S. on registered exchanges.

[21] The Exchange states that the Subsidiary will not be registered under the 1940 Act and will not be directly subject to its investor protections, except as noted in the Registration Statement. However, the Subsidiary will be wholly-owned and controlled by the Fund. Therefore, the Fund's ownership and control of the Subsidiary will prevent the Subsidiary from taking action contrary to the interests of the Fund or its shareholders. The Board will have oversight responsibility for the investment activities of the Fund, including its expected investment in the Subsidiary, and the Fund's role as the sole shareholder of the Subsidiary. The Subsidiary will also enter into separate contracts for the provision of custody, transfer agency, and accounting agent services with the same or with affiliates of the same service providers that provide those services to the Fund.

[22] *See* Notice, *supra* note 3, 81 FR at 14144–45 (listing the futures contracts in which the Subsidiary will initially consider investing and providing instrument's trading hours, exchange, and ticker symbol). The Exchange states that, as: (1) The U.S. and foreign exchanges list additional contracts; (2) currently listed contracts on those exchanges gain sufficient liquidity; or (3) other exchanges list sufficiently liquid contracts, the Adviser and/or any Sub-Adviser will include those contracts in the list of possible investments of the Subsidiary. The Exchange further represents that the Commodity Futures Trading Commission ("CFTC") has adopted substantial amendments to CFTC Rule 4.5 relating to the permissible exemptions and conditions for reliance on exemptions from registration as a commodity pool operator. As a result of the instruments that will be indirectly held by the Fund, the Adviser will register as a commodity pool operator and will also be a member of the National Futures Association ("NFA"). Any Sub-Adviser will register as a commodity pool operator or commodity trading adviser, as required by CFTC regulations. The Fund and the Subsidiary will be subject to regulation by the CFTC and NFA and additional disclosure, reporting, and recordkeeping rules imposed upon commodity pools.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including securities deemed illiquid by the Adviser.[23] The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act[24] and the rules and regulations thereunder applicable to a national securities exchange.[25] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[26] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission also finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[27] which sets forth the finding of Congress that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans for the Shares. An estimated value, defined in Nasdaq Rule 5735(c)(3) as the "Intraday Indicative Value," that reflects an estimated intraday value of the Fund's portfolio (including the Subsidiary's portfolio), will be disseminated. The Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service[28] will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session.[29] On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund will disclose on its Web site the identities and quantities of the portfolio of securities, Commodities, and other assets ("Disclosed Portfolio," as defined in Nasdaq Rule 5735(c)(2)) held by the Fund and the Subsidiary that will form the basis for the Fund's calculation of NAV at the end of the business day.[30]

The Fund's NAV will be determined as of the close of trading (normally 4:00 p.m., E.T.) on each day the New York Stock Exchange is open for business.[31]

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[23] In reaching liquidity decisions, the Adviser may consider the following factors: The frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace trades (*e.g.*, the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

[24] 15 U.S.C. 78f.

[25] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[26] 15 U.S.C. 78f(b)(5).

[27] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[28] Currently, the NASDAQ OMX Global Index Data Service ("GIDS") is the NASDAQ OMX global index data feed service, offering real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETFs. According to the Exchange, GIDS provides investment professionals with the daily information needed to track or trade Nasdaq indexes, listed ETFs, or third-party partner indexes and ETFs.

[29] *See* Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4:00 a.m. to 9:30 a.m., E.T.; (2) Regular Market Session from 9:30 a.m. to 4:00 p.m. or 4:15 p.m., E.T.; and (3) Post-Market Session from 4:00 p.m. or 4:15 p.m. to 8:00 p.m., E.T.).

[30] The Fund's disclosure of derivative positions in the Disclosed Portfolio will include information that market participants can use to value these positions intraday. On a daily basis, the Fund will disclose on the Fund's Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding such as the type of swap), the identity of the security, commodity or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and percentage weighting of the holding in the Fund's portfolio. The Web site and information will be publicly available at no charge.

[31] In determining the value of the assets held by the Fund and the Subsidiary, the Fund's and the Subsidiary's investments will be generally valued using market valuations. A market valuation generally means a valuation (i) obtained from an exchange, a pricing service, or a major market maker (or dealer), (ii) based on a price quotation or other equivalent indication of value supplied by an exchange, a pricing service, or a major market maker (or dealer), or (iii) based on amortized cost. The Fund and the Subsidiary may use various pricing services or discontinue the use of any pricing service. A price obtained from a pricing service based on such pricing service's valuation matrix may be considered a market valuation. If available, Short-Term Debt Instruments (other than certificates of deposits, bank time deposits, and repurchase agreements), corporate debt obligations, other cash equivalents, and money market instruments (other than money market mutual funds) with maturities of more than 60 days will typically be priced based on valuations provided by independent, third-party pricing agents. Such values will generally reflect the last reported sales price if the instrument is actively traded. The third-party pricing agents may also value debt instruments at an evaluated bid price by employing methodologies that utilize actual market transactions, broker-supplied valuations, or other methodologies designed to identify the market value for such instruments. Short-Term Debt Instruments (other than certificates of deposit, bank time deposits, and repurchase agreements), corporate debt obligations, other cash equivalents, and money market instruments (other than money market mutual funds) with remaining maturities of 60 days or less may be valued on the basis of amortized cost, which approximates market value. If such prices are not available, the instrument will be valued based on values supplied by independent brokers or by fair value pricing. Certificates of deposit and bank time deposits will typically be valued at cost. Repurchase agreements will typically be valued as follows: Overnight

Additionally, information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Intra-day executable price quotations on the securities and other assets held by the Fund and the Subsidiary will be available from major broker-dealer firms or on the exchange on which they are traded, as applicable. Intra-day price information on the securities and other assets held by the Fund and the Subsidiary will also be available through subscription services, such as Bloomberg and Thomson Reuters, which can be accessed by authorized participants and other investors.[32] The Fund's Web site will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily, and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. Trading in the Shares also will be subject to Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12). Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities, Commodities, and other assets constituting the Disclosed Portfolio of the Fund and the Subsidiary; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Exchange also represents that the Adviser is affiliated with a broker-dealer, and the Adviser has implemented a firewall with respect to its broker-dealer affiliate regarding access to information concerning the composition of, and changes to, the portfolio.[33] Moreover, the Exchange represents that FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and in the exchange-traded Commodities and exchange-traded investment companies not included within the definition of "Commodities" (such investment companies, together with exchange-traded Commodities, are referred to as "Exchange-Traded Instruments") held by the Fund and the Subsidiary with other markets and other entities that are members of the ISG,[34] and FINRA may obtain trading information regarding trading in the Shares and in the Exchange-Traded Instruments held by the Fund and the Subsidiary from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and in the Exchange-Traded Instruments held by the Fund and the Subsidiary from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange,[35] will be able to access, as needed, trade information for certain

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repurchase agreements will be valued at amortized cost when it represents the best estimate of value. Term repurchase agreements (*i.e.*, those whose maturity exceeds seven days) will be valued at the average of the bid quotations obtained daily from at least two recognized dealers. Futures contracts will be valued at the settlement price established each day by the board or exchange on which they are traded. Exchange-traded options will be valued at the closing price in the market where such contracts are principally traded. Swaps will be valued based on valuations provided by independent, third-party pricing agents. Securities of non-exchange-traded investment companies will be valued at the investment company's applicable NAV. Equity securities (including exchange-traded commodity-linked instruments and exchange-traded investment companies, other than exchange-traded commodity-linked instruments) listed on a securities exchange, market, or automated quotation system for which quotations are readily available (except for securities traded on the Exchange) will be valued at the last reported sale price on the primary exchange or market on which they are traded on the valuation date (or at approximately 4:00 p.m., E.T. if a security's primary exchange is normally open at that time). For a security that trades on multiple exchanges, the primary exchange will generally be considered to be the exchange on which the security generally has the highest volume of trading activity. If it is not possible to determine the last reported sale price on the relevant exchange or market on the valuation date, the value of the security will be taken to be the most recent mean between the bid and asked prices on such exchange or market on the valuation date. Absent both bid and asked prices on such exchange, the bid price may be used. For securities traded on the Exchange, the Exchange official closing price will be used. If such prices are not available, the security will be valued based on values supplied by independent brokers or by fair value pricing. The prices for foreign instruments will be reported in local currency and converted to U.S. dollars using currency exchange rates. Exchange rates will be provided daily by recognized independent pricing agents. In the event that current market valuations are not readily available or such valuations do not reflect current market values, the affected investments will be valued using fair value pricing pursuant to the pricing policy and procedures approved by the Board in accordance with the 1940 Act. The frequency with which the Fund's and the Subsidiary's investments are valued using fair value pricing will be primarily a function of the types of securities and other assets in which they invest pursuant to their respective investment objectives, strategies, and limitations.

[32] More specifically, pricing information for exchange-traded commodity futures contracts, exchange-traded options on futures contracts, exchange-traded commodity-linked instruments, and exchange-traded investment companies (other than exchange-traded commodity-linked instruments) will be available on the exchanges on which they are traded and through subscription services. Pricing information for non-exchange-traded U.S. registered open-end investment companies will be available through the applicable fund's Web site or major market data vendors. Pricing information for swaps, corporate debt obligations, money market instruments (other than money market mutual funds), other cash equivalents, and Short-Term Debt Instruments will be available through subscription services and/or broker-dealer firms and/or pricing services. Additionally, the Trade Reporting and Compliance Engine ("TRACE") of the Financial Industry Regulatory Authority ("FINRA") will be a source of price information for certain fixed income securities held by the Fund.

[33] *See supra* note 7 and accompanying text. An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Adviser and any Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[34] For a list of the current members of ISG, *see www.isgportal.org*. The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[35] According to the Exchange, FINRA surveils trading on the Exchange pursuant to a regulatory services agreement, and the Exchange is responsible for FINRA's performance under this regulatory services agreement.

fixed income securities held by the Fund reported to FINRA's TRACE.

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will be subject to Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange represents that its surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. Trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and FINRA, on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.

(4) FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and in the Exchange-Traded Instruments held by the Fund and the Subsidiary with other markets and other entities that are members of the ISG and FINRA may obtain trading information regarding trading in the Shares and in the Exchange-Traded Instruments held by the Fund and the Subsidiary from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and in the Exchange-Traded Instruments held by the Fund and the Subsidiary from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE.

(5) With respect to the futures contracts and exchange-traded options on futures contracts in which the Subsidiary invests, not more than 10% of the weight (to be calculated as the value of the contract divided by the total absolute notional value of the Subsidiary's futures and options contracts) of the futures and options contracts held by the Subsidiary in the aggregate shall consist of instruments whose principal trading market (a) is not a member of ISG or (b) is a market with which the Exchange does not have a comprehensive surveillance sharing agreement, provided, that so long as the Exchange may obtain market surveillance information with respect to transactions occurring on the Commodity Exchange pursuant to the ISG memberships of the Chicago Mercantile Exchange, the Chicago Board of Trade and the New York Mercantile Exchange, futures and options contracts whose principal trading market is the Commodity Exchange shall not be subject to the prohibition in (a) above.

(6) Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (c) how and by whom information regarding the Intraday Indicative Value and the Disclosed Portfolio is disseminated; (d) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (e) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(7) For initial and/or continued listing, the Fund and the Subsidiary must be in compliance with Rule 10A–3 under the Act.[36]

(8) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including securities deemed illiquid by the Adviser.

(9) The Fund and the Subsidiary will not invest in any non-U.S. equity securities (other than shares of the Subsidiary).

(10) The Fund will invest in Commodities through investments in the Subsidiary and will not invest directly in physical commodities. The Fund's investment in the Subsidiary may not exceed 25% of the Fund's total assets.

(11) Investments in non-exchange-cleared swaps (through the Subsidiary) will not represent more than 20% of the Fund's net assets.

(12) The exchange-traded investment companies and commodity-linked instruments in which the Fund invests will be listed and traded in the U.S. on registered exchanges.

(13) The Fund and the Subsidiary will not invest in leveraged or inverse leveraged (*e.g.,* 2X or −3X) commodity-linked instruments *or securities of investment companies.*

(14) At least 75% of corporate debt obligations will have a minimum principal amount outstanding of $100 million or more.

(15) While the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will be consistent with the Fund's investment objective and will not be used to seek performance that is the multiple or inverse multiple (*i.e.,* 2X and −3X) of an index.

(16) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

The Exchange represents that all statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange. In addition, the issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements.[37] If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series.

This approval order is based on all of the Exchange's representations, including those set forth above, in the

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[36] *See* 17 CFR 240.10A–3.

[37] The Commission notes that certain other proposals for the listing and trading of Managed Fund Shares include a representation that the exchange will "surveil" for compliance with the continued listing requirements. *See, e.g.,* Securities Exchange Act Release No. 77499 (April 1, 2016), 81 FR 20428 (April 7, 2016) (Notice of Filing of Amendment No. 2, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of the SPDR DoubleLine Short Duration Total Return Tactical ETF of the SSgA Active Trust), *available at: http://www.sec.gov/rules/sro/bats/2016/34-77499.pdf.* In the context of this representation, it is the Commission's view that "monitor" and "surveil" both mean ongoing oversight of the Fund's compliance with the continued listing requirements. Therefore, the Commission does not view "monitor" as a more or less stringent obligation than "surveil" with respect to the continued listing requirements.

Notice, and in Amendment No. 1 to the proposed rule change. The Commission notes that a commenter has expressed support for the proposal.[38] The Commission further notes that the Fund and the Shares must comply with the requirements of Nasdaq Rule 5735, including those set forth in this proposed rule change, as modified by Amendment No. 1 thereto, to be listed and traded on the Exchange on an initial and continuing basis.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1 thereto, is consistent with Section 6(b)(5) of the Act[39] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[40] that the proposed rule change (SR–NASDAQ–2016–030), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

Brent J. Fields,

Secretary.

[FR Doc. 2016–09897 Filed 4–27–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77692; File No. SR–BOX–2016–16]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To (I) Amend BOX Rule 7280 (Bulk Cancellation of Trading Interest) To Adopt a Kill Switch and (II) Amend BOX Rule 7110 (Order Entry) To Modify the Circumstances That Will Prevent a Session Order From Being Cancelled

April 22, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 11, 2016, BOX Options Exchange LLC ("BOX" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to (i) amend BOX Rule 7280 (Bulk Cancellation of Trading Interest) to adopt a Kill Switch and (ii) amend BOX Rule 7110 (Order Entry) to modify the circumstances that will prevent a Session Order from being cancelled. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing enhancements to the risk controls on the Exchange. Specifically, the Exchange is proposing to amend BOX Rule 7280 (Bulk Cancellation of Trading Interest) to adopt a Kill Switch and to also amend BOX Rule 7110 (Order Entry) to modify the circumstances that will prevent a Session Order from being cancelled.

Kill Switch

The Exchange proposes to amend Rule 7280 (Bulk Cancellation of Trading Interest) to add new section (b) to adopt the Kill Switch. The Kill Switch will be an optional tool that enables Participants to initiate a message to the BOX system to remove a Participant's quotes and/or cancel the Participant's orders. When submitting a request to the system to remove/cancel quotes and/or orders, a Participant must provide the Options Participant identification number ("Participant ID"). Additionally, the Participant may, but is not required to, specify a specific underlying security, class, or account type when requesting the system to remove/cancel quotes and/or orders. The system will send an automated message to the Participant when a Kill Switch request has been processed by the system. A Participant may also call the MOC[3] directly to request initiation of the Kill Switch if the Participant is not able to send the message to the BOX system directly.

When submitting a message to the system to initiate the Kill Switch, Participants may specify a lock-out instruction. The lock-out instruction prevents the entering of any additional orders and/or quotes from the specific Participant ID until re-entry has been enabled. If a lock-out is requested, all orders and quotes that originate from the Participant ID will be canceled, regardless of any other instructions in the message or any additional messages sent to the system. The Participant ID will remain locked-out until the Participant makes a verbal request to the MOC to re-enable the Participant ID.

Session Orders

The Exchange currently offers a Session Order designation.[4] An order with a Session Order designation will remain active in the BOX trading system until one of the following events ("Triggering Event") occurs: (1) The connection between the Participant and BOX that was used to enter the order is interrupted; (2) there is a disconnection between internal BOX components used to process orders, causing a component to lose its connection to the Participant or the Trading Host[5] while in possession of the Session Order; (3) a component of the Trading Host experiences a system error in which it is unable to process open orders while in possession of the Session Order.

Currently, a Session Order will not be cancelled and shall remain active if the order is not allowed to be cancelled pursuant to another Exchange Rule or it is being processed under certain Exchange Rules when the Triggering Event occurs. Specifically, the Session Order will not be cancelled when: (1) The order is being exposed to the BOX market pursuant to Rule 7130(b); (2) the order is a Directed Order to which the

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[38] *See* Anonymous Letter, *supra* note 4.

[39] 15 U.S.C. 78f(b)(5).

[40] 15 U.S.C. 78s(b)(2).

[41] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term "MOC" or "Market Operations Center" means the BOX Market Operations Center, which provides market support for Options Participants during the trading day.

[4] *See* Rule 7110(e)(1)(iii).

[5] The term "Trading Host" means the automated trading system used by BOX for the trading of options contracts.

Executing Participant ("EP") has not yet responded pursuant to Rule 8040(d)(2); or (3) the order has been routed to an away exchange pursuant to Rule 15030; provided however, that any remainder of a Session Order returned by the away exchange will be cancelled upon its return to BOX. The Exchange is now proposing to amend the circumstances that will prevent a Session Order from being cancelled. Specifically, the Exchange is now proposing to allow an order with a Session Order designation to be cancelled when the order is being exposed to the BOX market and/or the order is a Directed Order to which the EP has not yet responded.[6]

The Exchange will provide Participants with notice, via Information Circular, about the implementation date of these proposed enhancements to the protections offered by the Exchange.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),[7] in general, and Section 6(b)(5) of the Act,[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by enhancing the risk protections available to Participants. The proposal promotes policy goals of the Commission which has encouraged execution venues, exchange and non-exchange alike, to enhance risk protection tools and other mechanisms to decrease risk and increase stability.

The individual firm benefits of enhanced risk protections flow downstream to counterparties both at the Exchange and at other options exchanges, thereby increasing systemic protections as well. Additionally, because the Exchange offers this risk tool to all Participants, the Exchange believes it will encourage liquidity generally and remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

This optional risk tool, as noted above, will be offered to all Participants on BOX. The Exchange further represents that its proposal will operate consistently with the firm quote obligations of a broker-dealer pursuant to Rule 602 of Regulation NMS and that the functionality is not mandatory. Specifically, any interest that is executable against a Participant's quotes or orders that are received by the Exchange prior to the time the Kill Switch is processed by the system will automatically execute at the price up to the Participant's size. The Kill Switch message will be accepted by the system in the order of receipt in the queue and will be processed in that order so any interest that is already accepted into the system will be processed prior to the Kill Switch message.

Market Makers' obligations to provide continuous two-sided quotes on a daily basis are not diminished by the removal of such quotes and/or orders by utilizing the Kill Switch. Market Makers will be required to provide continuous two-sided quotes on a daily basis. Market Makers that utilize the Kill Switch will not be relieved of the obligation to provide continuous two-sided quotes on a daily basis, nor will it prohibit the Exchange from taking disciplinary action against a Market Maker for failing to meet the continuous quoting obligations each trading day.

With respect to the proposed changes to the Session Order designation, the Exchange believes they are reasonable because they will expand the protections available to Participants transacting on the Exchange. Specifically, the proposed changes will protect investors and the public interest by allowing Participants to cancel their orders when a system issue occurs that infringes on the ability of a Participant to communicate with the Exchange's systems.

The Exchange believes the proposed changes to the Session Order designation, specifically the deletion of the two exceptions to the Triggering Events dealing with an order being exposed and an order that is a Directed Order,[9] is reasonable because they are not considered core exchange functions and the deletion of these exceptions to the Triggering Events will not affect a fair and orderly market and national market system. Further, the Exchange believes it is reasonable to keep the remaining exception to the Triggering Events, specifically when an order has been routed to an away exchange pursuant to Rule 15030, in the rule text because it is out of the Exchange's control.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposal will provide market participants with additional protections. The proposed rule change is meant to protect Participants in the event the Participant is suffering from a systems issue or from the occurrence of unusual or unexpected market activity that would require them to withdraw from the market. Reducing such risk will enable Participants to enter quotes and orders without fear of inadvertent exposure of excessive risk, which in turn will benefit investors through increased liquidity for the execution of their orders. Such increased liquidity benefits investors because they receive better prices and because it lowers volatility in the options market. The proposal does not impose an undue burden on intramarket competition because all Participants may avail themselves of the Kill Switch, which functionality will be optional. Additionally, the proposed protections relating to the Kill Switch are similar to those available on competing exchanges.[10] For these reasons, the Exchange does not believe this proposal imposes an undue burden on inter-market competition; rather, the proposed rule change will have no impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

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[6] *See* Proposed Rule 7110 (e)(1)(iii)(C).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *See supra* note 6.

[10] *See* Ch. VI, Sec. 6(d) of the NASDAQ OMX BX, Inc. ("BX") Rules, Ch. VI, Sec. 6(d) of the NASDAQ OMX ("NOM") Rules. *See also* Securities Exchange Act Release Nos. 76116 (October 8, 2015), 80 FR 199 (October 15, 2015) (Order Approving SR–BX–2015–50) and 76123 (October 9, 2015), 80 FR 62591 (October 16, 2015) (Order Approving SR–NASDAQ–2015–096).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

A proposed rule change filed under Rule 19b–4(f)(6) under the Act[15] normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[16] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that the proposed rule change is designed to protect Participants in the event a Participant is suffering from a systems issue or from the occurrence of unusual or unexpected market activity.[17] To the extent that the Exchange's proposal provides member firms with greater control over their quotes and orders, and allows firms to remove quotes and cancel orders in an appropriate manner, then the proposal may encourage firms to provide liquidity on the Exchange and thus contribute to fair and orderly markets in a manner that protects the public interest, protects investors, and is not designed to permit unfair discrimination. The Commission notes that the proposal is similar to the rules of other exchanges[18] and therefore does not raise any new, unique or substantive issues. Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[19] The Commission hereby grants the Exchange's request and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BOX–2016–16 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2016–16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2016–16, and should be submitted on or before May 19, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Brent J. Fields,

Secretary.

[FR Doc. 2016–09900 Filed 4–27–16; 8:45 am]

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[13] 15 U.S.C. 78s(b)(3)(A).

[14] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] *See supra* Section II.A.2.

[18] *See supra* note 10.

[19] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77699; File No. SBSDR–2016–01]

Security-Based Swap Data Repositories; ICE Trade Vault, LLC; Notice of Filing of Application for Registration as a Security-Based Swap Data Repository

April 22, 2016.

I. Introduction

On March 29, 2016, and as amended on April 18, 2016, ICE Trade Vault, LLC ("ICE Trade Vault") filed with the Securities and Exchange Commission ("Commission") a Form SDR seeking registration as a security-based swap data repository ("SDR") under Section 13(n) of the Securities Exchange Act of 1934 ("Exchange Act")[1] and the Commission's rules promulgated thereunder.[2] ICE Trade Vault proposes to operate as a registered SDR for security-based swap ("SBS") transactions in the credit derivatives asset class. The Commission is publishing this notice to solicit comments from interested persons regarding ICE Trade Vault's Form SDR,[3] and the Commission will consider any comments it receives in making its determination whether to grant ICE Trade Vault registration as an SDR.[4]

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[1] 15 U.S.C. 78m(n)(3).

[2] 17 CFR 240.13n–1 through 240.13n–12.

[3] ICE Trade Vault filed its Form SDR, including the exhibits thereto, electronically with the Commission. The descriptions set forth in this notice regarding the structure and operations of ICE Trade Vault have been derived, excerpted, and/or summarized from information in ICE Trade Vault's Form SDR application, and principally from ICE Trade Vault's Guidebook (Exhibit GG.2), which outlines the applicant's policies and procedures designed to address its statutory and regulatory obligations as an SDR registered with the Commission. ICE Trade Vault's Form SDR application and non-confidential exhibits thereto are available in EDGAR at *http://www.sec.gov/cgi-bin/browse-edgar?CIK=0001658496&owner=exclude&action=getcompany&Find=Search*. In addition, the public may access copies of these materials on the Commission's Web site at: *http://www.sec.gov/rules/other/2016/ice-trade-vault-form-sdr-htm*.

II. Background

A. SDR Registration, Duties and Core Principles, and Regulation SBSR

Section 763(i) of the Dodd-Frank Act added Section 13(n) to the Exchange Act, which requires an SDR to register with the Commission and provides that, to be registered and maintain registration as an SDR, an SDR must comply with certain requirements and "core principles" described in Section 13(n) and any requirement that the Commission may impose by rule or regulation.[5]

The Commission adopted Exchange Act Rules 13n–1 through 13n–12 ("SDR rules"), which require an SDR to register with the Commission and comply with certain "duties and core principles." [6] Among other requirements, the SDR rules require an SDR to collect and maintain accurate SBS data and make such data available to the Commission and other authorities so that relevant authorities will be better able to monitor the buildup and concentration of risk exposure in the SBS market.[7]

Concurrent with the Commission's adoption of the SDR rules, the Commission adopted Regulation SBSR,[8] which, among other things, provides for the reporting of SBS information to registered SDRs, and the public dissemination of SBS transaction, volume, and pricing information by registered SDRs. In addition, Regulation SBSR requires each registered SDR to register with the Commission as a securities information processor.[9]

B. Standard for Granting SDR Registration

To be registered with the Commission as an SDR and maintain such registration, an SDR is required (absent an exemption) to comply with the requirements and core principles described in Exchange Act Section 13(n), as well as with any requirements that the Commission adopts by rule or regulation.[10] Exchange Act Rule 13n–1(c)(3) provides that the Commission shall grant the registration of an SDR if it finds that the SDR is so organized, and has the capacity, to be able to (i) assure the prompt, accurate, and reliable performance of its functions as an SDR; (ii) comply with any applicable provisions of the securities laws and the rules and regulations thereunder; and (iii) carry out its functions in a manner consistent with the purposes of Section 13(n) of the Exchange Act and the rules and regulations thereunder.[11] The Commission must deny registration of an SDR if it does not make such a finding.[12]

In determining whether an applicant meets the criteria set forth in Rule 13n–1(c), the Commission will consider the information reflected by the applicant on its Form SDR, as well as any additional information obtained from the applicant. For example, Form SDR requires an applicant to provide, among other things, contact information, a list of the asset class(es) for which the applicant is collecting and maintaining data or for which it proposes to collect and maintain data, a description of the functions that it performs or proposes to perform, and general information regarding its business organization.[13] This, and other information reflected on the Form SDR, will assist the Commission in understanding the basis for registration as well as the SDR applicant's overall business structure, financial condition, track record in providing access to its services and data, technological reliability, and policies and procedures to comply with its statutory and regulatory obligations.[14] Furthermore, the information requested in Form SDR will enable the Commission to assess whether the SDR applicant would be able to comply with the federal securities laws and the rules and regulations thereunder, and ultimately whether to grant or deny an application for registration.[15]

III. ICE Trade Vault Application for Registration

ICE Trade Vault currently operates as a trade repository under the regulatory framework of other authorities. Specifically, ICE Trade Vault is a swap data repository regulated and provisionally registered by the Commodity Futures Trading Commission ("CFTC").[16] In that capacity, ICE Trade Vault has been accepting derivatives data for the commodity and credit asset classes in the United States since October 2012. Additionally, in 2014, ICE Trade Vault was approved by the Ontario Securities Commission,[17] the Autorité des marchés financiers,[18] and the Manitoba Securities Commission [19] as a Canadian Trade Repository to serve the commodity, credit, and foreign exchange asset classes.

A. Corporate Structure and Governance Arrangements

ICE Trade Vault is a Delaware limited liability company, and is a wholly owned subsidiary of Intercontinental Exchange Holdings, Inc., which, in turn, is a wholly owned subsidiary of Intercontinental Exchange, Inc. ("ICE"), a publicly traded company.[20] ICE Trade Vault is managed by a Board of Directors responsible for overseeing its operations.[21] The Board of Directors has the ability to: (i) Designate and authorize specific appointed officers to act on behalf of the Board of Directors; (ii) fix, determine and levy all fees, when necessary; (iii) prepare and amend ICE Trade Vault's Guidebook; [22] (iv) act in emergencies; and (v) delegate any such power to the appropriate party.[23] The Board of Directors would oversee ICE Trade Vault's SDR functions as it currently oversees the other regulated services that ICE Trade Vault provides.[24]

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[4] ICE Trade Vault's Form SDR application also constitutes an application for registration as a securities information processor ("SIP"). *See* Exchange Act Release No. 74246 (Feb. 11, 2015), 80 FR 14438, 14458 (Mar. 19, 2015) ("SDR Adopting Release").

[5] 15 U.S.C. 78m(n).

[6] *See* SDR Adopting Release, 80 FR at 14438.

[7] *See* SDR Adopting Release, 80 FR at 14450.

[8] *See* Exchange Act Release No. 74244 (Feb. 11, 2015), 80 FR 14563 (Mar. 19, 2015) ("Regulation SBSR Adopting Release").

[9] *See* Regulation SBSR Adopting Release, 80 FR at 14567.

[10] *See* Exchange Act Section 13(n)(3), 15 U.S.C. 78m(n)(3).

[11] *See* 17 CFR 240.13n-1(c)(3).

[12] *See id.*

[13] *See* SDR Adopting Release, 80 FR at 14458.

[14] *See id.*

[15] *See* SDR Adopting Release, 80 FR at 14458–59.

[16] *See* Order of Provisional Registration, In the Matter of the Request of ICE Trade Vault, LLC for Provisional Registration as a Swap Data Repository Pursuant to Section 21 of the Commodity Exchange Act and Part 49 of the Commodity Futures Trading Commission's Regulations (June 27, 2012), *available at http://www.cftc.gov/stellent/groups/public/@otherif/documents/ifdocs/icetradevaultregistration.pdf.*

[17] *See* Ontario Securities Commission, Order (Section 21.2.2 of the Securities Act), in the Matter of the Securities Act, R.S.O. 1990, Chapter S.5, as amended, and in the Matter of ICE Trade Vault, LLC (Sept. 19, 2014), *available at http://www.osc.gov.on.ca/documents/en/Securities/ord_20140923_215-ice-trade-vault-llc.pdf.*

[18] *See* Autorité des marchés financiers, Decision 2014–PDG–0111, Bulletin 2014–09–25, Vol. 11, n°38 (Sept. 23, 2014), *available at http://www.lautorite.qc.ca/files/pdf/bourses-oar-chambres/referentiels-centraux/2014_pdg_0111_ice_tv.pdf.*

[19] *See* Manitoba Securities Commission, Order No. 7014 (Oct. 23, 2014), *available at http://docs.mbsecurities.ca/msc/oe/en/item/105126/index.do.*

[20] *See* Exhibit V.2 (Disclosure Document). ICE is a global operator of exchanges, clearing houses, and data services for financial and commodity markets. ICE operates global marketplaces for trading and clearing a broad array of securities and derivatives contracts across major asset classes, including energy and agricultural commodities, interest rates, equities, equity derivatives, credit derivatives, bonds, and currencies.

[21] *See id.*

[22] *See* Exhibit GG.2 (Guidebook).

[23] *See id.*

[24] *See id.*

According to ICE Trade Vault, the Board of Directors is required to have at least three Directors, all appointed by ICE.[25] ICE Trade Vault represents that ICE considers several factors in determining the composition of the Board of Directors, including whether directors, both individually and collectively, possess the required integrity, experience, judgment, commitment, skills and expertise to exercise their obligations of oversight and guidance over an SDR.[26]

Additionally, ICE Trade Vault represents that its participants are afforded the opportunity to participate in the process for nominating the ICE Trade Vault Independent Director and with the right to petition for alternative candidates.[27] According to ICE Trade Vault, at least one Director will at all times be "independent" in accordance with applicable provision(s) of the New York Stock Exchange Listed Company Manual.[28] ICE Trade Vault represents that two officers of ICE Trade Vault's parent, ICE, currently serve as the Non-Independent Directors.[29]

ICE Trade Vault's Chief Compliance Officer ("CCO") is appointed by the Board of Directors and reports directly to the President of ICE Trade Vault.[30] The Board of Directors approves the compensation of the CCO and meets with the CCO at least annually.[31] According to ICE Trade Vault, the CCO also works directly with the Board of Directors in certain instances, for example, when resolving conflicts of interest.[32] ICE Trade Vault represents that the CCO's responsibilities include, but are not limited to: (i) Preparing and signing a compliance report with a financial report to be provided to the Commission annually; (ii) reviewing the compliance of ICE Trace Vault with respect to regulatory requirements and core principles; and (iii) establishing and administering written policies and procedures reasonably designed to prevent violations of the Exchange Act.[33]

ICE Trade Vault directors, officers and employees must comply with the ICE Global Code of Business Conduct, which describes policies for, among other things, handling conflicts of interest, prohibiting insider trading, complying with the law and document management and retention requirements.[34] In addition, ICE Trade Vault prohibits any member of its Board or of any Board committee (that the Board may create from time to time as it deems necessary) [35] that has authority to take action for ICE Trade Vault from knowingly participating in deliberations or voting in any matter involving a named party in interest where such member: (i) Is a named party in interest; (ii) is an employer, employee, or guarantor of a named party in interest; (iii) has a family relationship with a named party in interest; or (iv) has any other significant ongoing relationship with a named party in interest or an affiliate of such party.[36] Furthermore, the CCO of ICE Trade Vault shall determine whether any member of a deliberating body is subject to a prohibition under its conflicts of interest policies.[37]

B. Description of ICE Trade Vault's SDR Service

ICE Trade Vault has applied to become a registered SDR with the Commission to accept data in respect of all SBS trades in the credit derivatives asset class.[38]

ICE Trade Vault states that it intends to provide an SDR service that facilitates the collection, storage and regulatory reporting of a comprehensive range of trade data in respect of credit derivatives trades.[39] ICE Trade Vault also states that it intends to offer certain ancillary services (*i.e.*, services offered by ICE Trade Vault that are not core SDR functions), which include: (i) Confirmation of the accuracy of the data submitted to ICE Trade Vault; and (ii) resolution of trade record errors and disputes.[40]

C. Access

ICE Trade Vault represents that it would provide access to its SDR service on a fair, open and not unreasonably discriminatory basis.[41] According to ICE Trade Vault, access to and usage of its SDR service is available to all market participants that engage in SBS transactions, and do not require the use of any other ancillary service offered by ICE Trade Vault, except for any ancillary service(s) that ICE Trade Vault is required to provide.[42] ICE Trade Vault represents that for security reasons, access to the ICE Trade Vault system is strictly limited to market participants with valid permissions and security access who have executed a Participant Agreement with ICE Trade Vault and have completed and delivered to ICE Trade Vault the applicable ICE Trade Vault Enrollment Form (such market participants, "Participants").[43] According to ICE Trade Vault, Participants will only have access to their own data and data that ICE Trade Vault is required to make publically available.[44] ICE Trade Vault notes that passwords must meet technical and procedural processes for information security, must be from eight to fourteen characters in length, utilize three different character types, and must be reset at least annually.[45]

ICE Trade Vault represents that determinations to revoke access to its system, its SDR service or data maintained by ICE Trade Vault shall be made by the CCO.[46] According to ICE Trade Vault, unless circumstances require immediate action, prior to implementing a limitation or revocation of access to its system, its SDR service or SDR information, ICE Trade Vault's President and General Counsel shall review the basis for the limitation or revocation, with the CCO providing notice to the Participant of such limitation or revocation.[47] ICE Trade Vault represents that if the President and General Counsel determine that revocation of access is the result of unreasonable discrimination, the President and General Counsel will take such actions as are necessary to restore access to such service or data.[48]

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[25] *See id.*

[26] *See id.*

[27] *See id.*

[28] *See id.*

[29] *See id.*

[30] *See* Exhibit V.2.

[31] *See id.*

[32] *See id.*

[33] *See id.*

[34] *See* Exhibit D.4 (Global Code of Business Conduct).

[35] *See* Exhibit D.3 (Governance Principles).

[36] *See* Exhibit GG.2.

[37] *See id.*

[38] *See* ICE Trade Vault Form SDR, Item 6; *see also* Exhibits V.2 and GG.2.

[39] *See* Exhibit V.2.

[40] *See id.*

[41] *See* Exhibits V.2 and GG.2.

[42] *See id.; see also* SDR Adopting Release, 80 FR at 14451–52 (Commission noting that confirmation and dispute resolution services or functions "are ancillary. . . . [and are] not 'core' SDR services, which would cause a person providing such core services to meet the definition of an SDR, and thus, require the person to register with the Commission as an SDR. However, SDRs are required to perform these two services or functions, and thus, they are required ancillary services[.] . . . An SDR may delegate some of these required ancillary services to third party service providers, who do not need to register as SDRs to provide such services. The SDR will remain legally responsible for the third party service providers' activities relating to the required ancillary services and their compliance with applicable rules under the Exchange Act.").

[43] *See* Exhibit V.2 (stating also that these documents are available upon request, and when enrolling with ICE Trade Vault, Participants must designate a master user ("Administrator"), who will, among other things, create and maintain all user IDs for its firm, which will ensure ICE Trade Vault access is granted by a trusted individual at the Participant's firm who is closest to and has the most knowledge of those in the firm who require access).

[44] *See id.*

[45] *See id.*

[46] *See id.*

[47] *See* Exhibit GG.2.

D. Use of Data

ICE Trade Vault represents that access to information it maintains as an SDR would be limited to those with the direct responsibility for supporting the ICE Trade Vault system, its SDR service, Participants and regulators.[49] ICE Trade Vault would prohibit its employees and others performing similar functions on behalf of ICE Trade Vault from using information it maintains as an SDR other than in the performance of their job responsibilities.[50]

E. Asset Class Accepted; Submission Requirements; Validation

ICE Trade Vault has represented that it would accept data in respect of all SBS trades in the credit derivatives asset class.[51] ICE Trade Vault has represented that Participants would be required to submit trade information in the data format required by ICE Trade Vault.[52] The ICE Trade Vault system would accept tab delimited file uploads via web access and Applicable Programming Interface submissions in FpML format.[53]

Exhibit N.5 to ICE Trade Vault's application enumerates the required fields and acceptable values for the submission of trade information into the ICE Trade Vault system. According to ICE Trade Vault, the ICE Trade Vault system would perform certain validations to ensure that a submitted trade report adheres to the enumerated fields and values contained in Exhibit N.5.[54] Under ICE Trade Vault's policies and procedures, upon receipt of trade information for an SBS, the ICE Trade Vault system would validate that:

a. The submission file is in a valid format for receipt and processing;

b. All fields meet the required field format (*e.g.*, number, date, date timestamp, free form text, or standard data value);

c. All required and conditionally required fields are contained in the submission;

d. All conditionally required fields meet the validation standards; and

e. All standard data value fields are provided with an acceptable value.[55]

ICE Trade Vault's policies and procedures provide that, if the submitted trade information fails any of the above validations, the ICE Trade Vault system would generate an error message and give such information an "invalid" status.[56]

For historical SBS reporting, ICE Trade Vault represents that the ICE Trade Vault system would require Participants to indicate a "Y" value for "Flag for Historical Security-Based Swap public dissemination exemption." [57] In addition, the ICE Trade Vault system allows Participants to submit "Y" or "N" values for a field "Flag for Historical Security-Based Swap Life Cycle Event public dissemination" to update information in the ICE Trade Vault system associated with such SBS.[58]

ICE Trade Vault represents that it would support the reporting of highly customized and bespoke SBS ("exotic SBS").[59] ICE Trade Vault would require a Participant that wishes to submit a trade report for exotic SBS to upload a file to the ICE Trade Vault system that contains that trade information and the corresponding confirmed terms.[60]

F. Verification of Transaction Data

To fulfill its obligations under Exchange Act Rule 13n–5(b)(1), ICE Trade Vault's policies and procedures provide that it would require Participants to report complete and accurate trade information and to review and resolve all error messages generated by the ICE Trade Vault system.[61] If any trade information is found to be incorrect or incomplete, ICE Trade Vault would require Participants to correct and resubmit such information to the ICE Trade Vault system.[62] For SBS that are not executed on a platform, ICE Trade Vault would require the reporting side to provide the method used to confirm the trade information (*e.g.*, electronic confirmation service or paper confirmation). ICE Trade Vault would further require Participants to warrant and represent that all trade information reported to ICE Trade Vault is complete and accurate.[63] If the counterparties to an SBS use a paper confirmation to confirm the trade, ICE Trade Vault would require the reporting side to upload to the ICE Vault Trade system a copy of the confirmation that was agreed upon by the counterparties.[64]

According to ICE Trade Vault, clearing agencies would access ICE Trade Vault as Participants to report SBS that have been accepted for clearing. Platforms (such as an SBS execution facility) will access ICE Trade Vault as Participants to report the relevant data with respect to SBS that have been executed on their respective platforms or subject to the rules of their markets.[65]

ICE Trade Vault's policies and procedures provide that Participants would be responsible for the timely resolution of trade record errors contained in trade information that has been submitted to ICE Trade Vault.[66] ICE Trade Vault would provide Participants with electronic methods to extract information maintained by ICE Trade Vault for reconciliation.[67] If the non-reporting side for an SBS transaction discovers an error contained in the trade information submitted to ICE Trade Vault on its behalf, ICE Trade Vault requires that counterparty to notify promptly the reporting side of such error.[68] ICE Trade Vault represents that if the reporting side discovers an error contained in the trade information that it previously submitted to ICE Trade Vault or receives notification from a counterparty of an error, the reporting side is required to submit promptly to ICE Trade Vault amended trade information that remedies such error.[69] ICE Trade Vault would disseminate a corrected transaction report in instances where the initial report included erroneous primary trade information.[70]

G. Disputed Trade Data

Under ICE Trade Vault's policies and procedures, Participants would be required to notify promptly ICE Trade Vault of trade information that is disputed by the counterparties to the trade. ICE Trade Vault states that when a Participant "disputes" a trade stored in ICE Trade Vault's system, the status of the trade would remain "Disputed" until the party that disputed the trade sends a message to ICE Trade Vault indicating that the dispute has been resolved.[71]

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[48] *See id.* Because persons applying to be SDRs are also applying to be SIPs with the Commission, the procedures for notifying the Commission of any prohibitions or limitations of access to services as provided in Section 11A(b)(5)(A) would apply. *See* SDR Adopting Release, 80 FR at 14482 ("Rule 909 of Regulation SBSR, which the Commission is concurrently adopting in a separate release, requires each registered SDR to register as a SIP, and, as such, Exchange Act Section 11A(b)(5) governs denials of access to services by an SDR. This section provides that '[i]f any registered securities information processor prohibits or limits any person in respect of access to services offered, directly or indirectly, by such securities information processor, the registered securities information processor shall promptly file notice thereof with the Commission.' Accordingly, an SDR must promptly notify the Commission if it prohibits or limits access to any of its services to any person.").

[49] *See* Exhibits V.2 and GG.2.

[50] *See id.*

[51] *See id.*

[52] *See* Exhibit GG.2.

[53] *See id.*

[54] *See id.*

[55] *See id.*

[56] *See id.*

[57] *See id.*

[58] *See id.*

[59] *See id.*

[60] *See id.*

[61] *See id.; see also* Exhibit V.2.

[62] *See* Exhibit GG.2.

[63] *See id.*

[64] *See id.*

[65] *See id.*

[66] *See* Exhibits V.2 and GG.2.

[67] *See id.*

[68] *See id.*

[69] *See id.*

[70] *See id.*

H. Application and Dissemination of Condition Flags

ICE Trade Vault represents that it would apply submitted flags to trade information that is: (i) An error correction required to be disseminated by Rule 905(b)(2) of Regulation SBSR; or (ii) a life cycle event, or any adjustment due to a life cycle event, required to be disseminated by Rule 902(a) of Regulation SBSR.[72] In addition, ICE Trade Vault's policies and procedures require Participants of ICE Trade Vault to apply certain flags with respect to primary trade information (*i.e.*, flags required under Rule 901(c)(1)(v) of Regulation SBSR),[73] and ICE Trade Vault would publicly disseminate such flags if the SBS is eligible for public dissemination. ICE Trade Vault represents that certain flags address security-based swap characteristics that may contribute to creating a distorted market view.[74]

I. Calculation and Maintenance of Positions

As provided in ICE Trade Vault's policies and procedures, ICE Trade Vault states that it would calculate open positions for persons with open SBS for which ICE Trade Vault maintains records.[75] ICE Trade Vault's policies and procedures relating to its calculation of positions are provided in Exhibit GG.2.

J. Assignment of Unique Identification Codes

ICE Trade Vault's policies and procedures include the methodology ICE Trade Vault would utilize in connection with its assignment of unique identification codes ("UICs") in accordance with Rule 903 of Regulation SBSR.[76] In particular, ICE Trade Vault represents that it would assign UICs as follows:

1. Any SEC endorsed standard will be used, or in its absence;
2. Any CPMI–IOSCO endorsed standard will be used, or in its absence;
3. Any industry endorsed standard will be used, or in its absence;
4. ICE Trade Vault will generate an ID for the applicable UIC.[77]

K. Transaction ID Methodology

ICE Trade Vault represents that it has "endorsed" a transaction ID methodology as follows:

1. If a transaction is executed on a platform, that platform would generate the transaction ID.
2. If a transaction is cleared, the clearing agency would generate the transaction IDs for resulting cleared SBS.
3. If the transaction is executed off-platform and is not cleared, the parties must mutually agree which side of the trade will generate the transaction ID. When the transaction ID generator is the reporting side, that party may request that ICE Trade Vault generate the transaction ID on its behalf.
4. For historical SBS that have been reported in another jurisdiction, the transaction ID assigned in that jurisdiction will be used for reporting.
5. For historical SBS that have not been reported in another jurisdiction, the methodology described in items 1–3 above will apply.
6. A multi-jurisdictional transaction should never have multiple transaction IDs.[78]

L. Ultimate Parent and Affiliate Information

ICE Trade Vault's policies and procedures provide that Participants, except for those that are platforms or clearing agencies, would be required to provide ICE Trade Vault information (*e.g.*, parent IDs and counterparty IDs) to identify their ultimate parent(s) and affiliates.[79] In addition, ICE Trade Vault requires that Participants promptly notify ICE Trade Vault of any changes to such information.[80]

M. Branch and Trading Desk ID

Under ICE Trade Vault's policies and procedures, in order to receive a branch ID or trading desk ID from ICE Trade Vault, Participants must submit the branch and desk information to ICE Trade Vault before reporting an SBS.[81] More information concerning branch ID and trading desk ID is contained in Exhibit GG.2.

N. Product ID

ICE Trade Vault states that it would issue product IDs and maintain reference data representation for SBS that will include schema definitions and will be made publicly available on a non-fee basis on ICE Trade Vault's internet Web site (*www.icetradevault.com*).[82] According to ICE Trade Vault, if the industry creates and adopts a product ID taxonomy and registry, ICE Trade Vault would comply with the published standard at such time.[83] ICE Trade Vault has represented that it would create product IDs based on an industry accepted UPI taxonomy or, where not available, its own product taxonomy.[84]

ICE Trade Vault would require its Participants to notify ICE Trade Vault of any new SBS products they intend to report to ICE Trade Vault by submitting the relevant product information to: *ICETradeVaultSupport@theice.com*.[85] A complete list of available product information would be made available via a link on ICE Trade Vault's internet Web site.[86]

O. Missing UIC Information

ICE Trade Vault's policies and procedures provide that the reporting side to an SBS may report the non-reporting side's UIC information (other than counterparty ID) but is not required to do so.[87] ICE Trade Vault's policies and procedures provide that, if the non-reporting side is not a Participant, the non-reporting side "should contact ICE Trade Vault" via electronic mail to register for access to ICE Trade Vault and its trade information. ICE Trade Vault represents that it would identify in its records any SBS reported to it for which it does not have required UIC information.[88]

According to ICE Trade Vault, once a day, ICE Trade Vault would send a report to each Participant that is a counterparty to an SBS(s) that lacks required UIC information.[89] ICE Trade Vault represents in its policies and procedures that a Participant that receives a report must provide the missing information with respect to its side of each SBS referenced in the report to ICE Trade Vault within 24 hours.[90]

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[71] *See id.*

[72] *See* Exhibit GG.2.

[73] *See* 17 CFR 240.901(c)(i)(v).

[74] *See* Exhibit GG.2.

[75] *See id.*

[76] *See id.*

[77] *See id.*

[78] *See id.*

[79] *See id.*

[80] *See id.; see also* Exhibit U.5 (ICE Trade Vault Ultimate Parent & Affiliate Information Notification).

[81] *See* Exhibit GG.2.

[82] *See id.*

[83] *See id.*

[84] *See id.*

[85] *See id.*

[86] *See id.*

[87] *See id.; see also* Exhibit GG.2 (Guidebook, section 6.2 requirements relating to counterparty IDs, execution agent IDs and broker IDs).

[88] *See id.*

[89] *See id.*

P. Public Dissemination

ICE Trade Vault represents that it would publicly disseminate information required for public dissemination pursuant to Regulation SBSR, including SBS transaction reports, which contain all of the primary transaction information, and information regarding life cycle events or adjustments due to a life cycle event.[91] In addition, ICE Trade Vault would provide the public, Participants and regulators with the ability to download historical data.[92]

Q. Safeguarding Data, Operational Reliability, and Emergency Authority

ICE Trade Vault represents that it has implemented systems and procedures to allow for timely resumption of key business processes and operations following unplanned interruptions, unavailability of staff, inaccessibility of facilities, and disruption or disastrous loss to one or more of ICE Trade Vault's facilities or services.[93] ICE Trade Vault represents that its SDR service data is saved to a redundant, local database and a remote disaster recovery database in near real-time and that its SDR service database is backed up to tape daily with tapes moved offsite weekly.[94] ICE Trade Vault also states that Participants' individual trade data records remain available to Participants and regulators at no charge for online access through its SDR service from the date of submission until five years after expiration of the trade (last day of delivery or settlement as defined for each product).[95] According to ICE Trade Vault, after the initial five-year period, Participants' trade data will be stored off-line and remain available to Participants and regulators, upon a three-day advance request to ICE Trade Vault, until ten years from the termination date.[96] ICE Trade Vault also states that Participants will retain unimpaired access to its online and archived trade data.[97]

ICE Trade Vault represents that it maintains and will continue to maintain a robust emergency and business-continuity and disaster recovery plan ("Business Continuity Plan") that allows for timely resumption of key business processes and operations following unplanned interruptions, unavailability of staff, inaccessibility of facilities, and disruption or disastrous loss to one or more of ICE Trade Vault's facilities or services.[98] ICE Trade Vault represents that its Business Continuity Plan requires that all production system hardware and software is replicated in near real-time at a geographical- and vendor-diverse disaster recovery site to avoid any loss of data.[99]

ICE Trade Vault represents that it is authorized to determine, in its sole discretion, whether an emergency exists with respect to, or otherwise threatens, its system or its SDR service (an "Emergency") and whether emergency action is warranted to mitigate such circumstances, but that it may also exercise emergency authority if ordered to do so by the Commission or other regulatory agency of competent jurisdiction.[100] Circumstances requiring the invocation of emergency authority pursuant to ICE Trade Vault's policies and procedures include: (i) Any occurrence or circumstance that ICE Trade Vault determines to constitute an Emergency; (ii) any "Physical Emergency" (such as a fire or other casualty, bomb threats, terrorist acts, substantial inclement weather, power failures, communications breakdowns, computer system breakdowns, or transportation breakdowns); (iii) any occurrence or circumstance that threatens or may threaten the proper functionality of ICE Trade Vault's system or its SDR service; (iv) any occurrence or circumstance that may materially affect the performance of its system or its SDR service; (v) any action taken by any governmental body or any regulator that may have a direct impact on its system or its SDR service; and (vi) any other circumstance that may impact ICE Trade Vault, its system or its SDR service in a materially adverse manner.[101]

Under ICE Trade Vault's policies and procedures, if the President of ICE Trade Vault, or any individual designated by the President or the Board of Directors, determines that an Emergency is likely to arise or has arisen, the President or such designee, as the case may be, may, consistent with ICE Trade Vault's conflict of interest policies, declare an Emergency with respect to its system, its SDR service or the facilities of ICE Trade Vault and take or place into immediate effect a temporary emergency action or protocol.[102] ICE Trade Vault represents that any such action or protocol may remain in effect for up to 30 business days, after which time, and for each 30-business day period thereafter, it must be reissued by the Board of Directors to remain in effect.[103] Under ICE Trade Vault's policies and procedures, the CCO would be consulted in the event any emergency action or protocol may raise potential conflicts of interest.[104]

ICE Trade Vault represents that any such action or protocol may provide for, or may authorize ICE Trade Vault, the Board of Directors or any committee thereof to undertake, actions deemed necessary or appropriate by the President or its designee to respond to the Emergency, including, but not limited to, the following: Modifying or suspending any relevant provision of the Guidebook; changing the operating hours of its SDR service; temporarily limiting or denying access to its system or its SDR service; or requiring re-submission of any data lost or otherwise affected due to such Emergency.[105] Any such action placed into effect in accordance with the preceding paragraph may be reviewed by the Board of Directors at any time and may be revoked, suspended or modified by the Board of Directors.[106] ICE Trade Vault represents that it will notify the SEC as soon as is reasonably practicable of ICE Trade Vault's invocation of its emergency authority, any material business disruption, or any threat that actually or potentially jeopardizes automated system capacity, integrity, resiliency, availability or security,[107] with the decision-making process with respect to, and the reasons for, any such action recorded in writing[108] and with ICE Trade Vault notifying Participants via email as soon as practicable of any action taken (time permitting), or proposed to be taken.[109]

R. Data Confidentiality; Sensitive Information and Security

ICE Trade Vault represents that it "recognizes its responsibility to ensure data confidentiality and [that it] dedicates significant resources" to information security to prevent the misappropriation or misuse of confidential information, and that it does not, as a condition of accepting SBS data from Participants, require the waiver of any privacy rights by such Participants.[110] ICE Trade Vault would use a multi-tiered firewall scheme to

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[90] *See id.*

[91] *See id.*

[92] *See id.*

[93] *See id.*

[94] *See* Exhibits V.2 and GG.2.

[95] *See id.*

[96] *See* Exhibit V.2.

[97] *See* Exhibits V.2 and GG.2.

[98] *See id.*

[99] *See id.*

[100] *See* Exhibit GG.2.

[101] *See id.*

[102] *See id.*

[103] *See id.*

[104] *See id.*

[105] *See id.*

[106] *See id.*

[107] *See* Exhibits V.2 and GG.2.

[108] *See* Exhibit GG.2.

[109] *See id.*

[110] *See id.*

provide network segmentation and access control to its services.[111] A second set of firewalls would further isolate ICE Trade Vault's systems and provide added security to detect any threats.[112] In addition, network sensors would analyze all internet and private line traffic for malicious patterns.[113]

ICE Trade Vault's application states that certain controls would be regularly examined and tested by multiple tiers of internal and external test groups, auditors and independently contracted third-party security testing firms.[114] In addition, ICE Trade Vault has represented that it would undertake an audit for adherence to its data security policies on at least an annual basis.[115]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning ICE Trade Vault's Form SDR, including whether ICE Trade Vault has satisfied the requirements for registration as an SDR. To the extent possible, commenters are requested to provide empirical data and other factual support for their views. In addition, the Commission seeks comment on the following issues:

1. Please provide your views as to whether ICE Trade Vault's application for registration as an SDR demonstrates that ICE Trade Vault is so organized, and has the capacity, to be able to assure the prompt, accurate, and reliable performance of its functions as an SDR, comply with any applicable provisions of the securities laws and the rules and regulations thereunder, and carry out its functions in a manner consistent with the purposes of Section 13(n) of the Exchange Act and Commission's SDR rules.

2. Exchange Act Rule 13n–5(b)(1)(iii) requires every SDR to establish, maintain, and enforce written policies and procedures reasonably designed to satisfy itself that the transaction data that has been submitted to the SDR is complete and accurate. Please provide your views as to whether ICE Trade Vault's policies and procedures concerning verification of trade data are sufficiently detailed and reasonably designed to satisfy ICE Trade Vault that the transaction data that has been submitted to ICE Trade Vault is complete and accurate, as required by Rule 13n-5(b)(1)(iii).

3. Please provide your views as to whether ICE Trade Vault's policies and procedures to address confirmation of data accuracy and completeness for bespoke, bilateral SBS transactions (*i.e.*, requiring the reporting side of the transaction to identify the method used to confirm the trade information, either by use of an electronic confirmation service or by paper confirmation agreed upon by the counterparties) are appropriate and reasonably designed to meet its obligations under the Rule 13n–5(b)(1)(iii). In this regard, the Commission is also interested in receiving comments as to whether ICE Trade Vault's definition of "confirmed" as contained in its Guidebook (Exhibit GG.2) is appropriate.

4. Please provide your views as to whether ICE Trade Vault's policies and procedures relating to invalidly entered UICs being subject to an error message and an "invalid" status as noted in Exhibit GG.2 are sufficiently detailed to meet the objectives of Exchange Act Rule 13n–5(b)(1)(iii).

5. Please provide your views as to whether ICE Trade Vault's policies and procedures are sufficiently detailed and reasonably designed to ensure that the transaction data and positions that it maintains are complete and accurate, as required by Exchange Act Rule 13n–5(b)(3).

6. Please provide your views as to whether ICE Trade Vault's policies and procedures are sufficiently detailed and reasonably designed to ensure that it has the ability to protect the privacy of SBS transaction information that it receives, as required by Exchange Act Rule 13n–9.

7. Please provide your views as to whether ICE Trade Vault's policies and procedures are sufficiently detailed and reasonably designed to ensure that it has the ability to calculate positions, as required by Exchange Act Rule 13n–5(b)(2).

8. Please provide your views as to whether ICE Trade Vault's policies and procedures are sufficiently detailed and reasonably designed to provide a mechanism for Participants and their counterparties to effectively resolve disputes over the accuracy of SBS data that it maintains, as required by Exchange Act Rule 13n–5(b)(6). Are ICE Trade Vault's policies and procedures relating to dispute resolution adequate? Why or why not? Should the policies and procedures specify timeframes in the dispute resolution process to facilitate timely and conclusive resolution of disputes? Why or why not?

9. Please provide your views as to whether ICE Trade Vault's policies and procedures are sufficiently detailed and reasonably designed to ensure that its systems that support or are integrally related to the performance of its activities provides adequate levels of capacity, integrity, resiliency, availability and security, as required by Exchange Act Rule 13n–6.

10. Please provide your views as to whether the disclosures in ICE Trade Vault's Disclosure Document to a Participant prior to accepting any SBS data from that Participant or upon the Participant's request, as required by Exchange Act Rule 13n–10, are adequate. Specifically, the Commission is interested in receiving comments as to whether ICE Trade Vault's Disclosure Document contains adequate and sufficiently detailed information that would reasonably enable the Participant to identify and evaluate accurately the risks and costs associated with using ICE Trade Vault's services. Such information includes ICE Trade Vault's criteria for providing others with access to its services and data it maintains, its criteria for those seeking to connect to or link with it, its description of its policies and procedures regarding its noncommercial and/or commercial use of the SBS transaction information that it receives from a Participant, any registered entity, or any other person, its description of all the SBS data repository's services, including any ancillary services, and its description of its governance arrangements.

11. Please provide your views as to whether ICE Trade Vault's policies and procedures are sufficiently detailed and reasonably designed for the CCO's handling, management response, remediation, retesting, and closing of noncompliance issues, as required by Exchange Act Rule 13n–11(c)(7).

12. Please provide your views as to whether ICE Trade Vault's policies or procedures could result in an unreasonable restraint of trade or impose any material anticompetitive burden on the trading, clearing, or reporting of transactions.

13. Please provide your views as to whether ICE Trade Vault's proposed dues, fees, or other charges, discounts or rebates and the process for setting dues, fees, or other charges, discounts or rebates are fair and reasonable and not unreasonably discriminatory. Please address whether such proposed dues, fees, other charges, discounts, or rebates are applied consistently across all similarly situated users of ICE Trade Vault's services, including, but not limited to, Participants, market infrastructures (including central counterparties), venues from which data can be submitted to ICE Trade Vault (including exchanges, SBS execution facilities, electronic trading venues, and

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[111] *See id.*

[112] *See* Exhibits V.2 and GG.2.

[113] *See id.*

[114] *See id.*

[115] *See id.*

matching and confirmation platforms), and third party service providers.

14. Exchange Act Rule 13n–4(c)(2)(ii)–(iii) provides that each SDR must establish governance arrangements that provide for fair representation of market participants, and must provide representatives of market participants, including end-users, with the opportunity to participate in the process for nominating directors and with the right to petition for alternative candidates. Please provide your views as to whether ICE Trade Vault's governance structure provides fair representation and an opportunity for participation by market participants pursuant to Rule 13n–4(c)(2)(ii)–(iii).

15. Rule 903(a) of Regulation SBSR provides, in relevant part, that if no system has been recognized by the Commission, or a recognized system has not assigned a UIC to a particular person, unit of a person, or product, the registered SDR shall assign a UIC to that person, unit of person, or product using its own methodology. Is the methodology that ICE Trade Vault proposes to use to assign UICs as described in its application materials appropriate in light of the requirements under Rule 903(a) of Regulation SBSR? Why or why not?

16. Rule 907(c) of Regulation SBSR requires a registered SDR to make its Regulation SBSR policies and procedures publicly available on its Web site. The Commission has stated that this public availability requirement will allow all interested parties to understand how the registered SDR is utilizing the flexibility it has in operating the transaction reporting and dissemination system, and will provide an opportunity for Participants to make suggestions to the registered SDR for altering and improving those policies and procedures, in light of the new products or circumstances, consistent with the principles set out in Regulation SBSR.[116] ICE Trade Vault has proposed to satisfy its obligation under Rule 907(c) of Regulation SBSR by making the policies and procedures contained in Exhibit GG.2 and the other application exhibits referenced therein available on its public Web site. Is the information that is included in or referenced in Exhibit GG.2 appropriate in light of the requirements of Rule 907(c)?

17. For certain data fields, Exhibit N.5 indicates that the acceptable data format is the "standard data value" for the field, but Exhibit N.5 does not provide more specific information regarding acceptable data formats for such fields. ICE Trade Vault has indicated to Commission staff that it plans to make available to its Participants detailed specifications for reporting SBS information, and Participants will be permitted to download detailed descriptions of the acceptable data format for each "standard data value" from the ICE Trade Vault system. However, ICE Trade Vault stated in its discussions with Commission staff that it will make such additional specifications available only to Participants who have executed a Participant Agreement. Is it anticipated to be problematic for persons seeking to report SBS information to an SDR to be required to execute a Participant Agreement as a condition to ICE Trade Vault providing access to the additional data format specifications?

18. Regulation SBSR imposes duties on various market Participants to report SBS transaction information to a registered SDR. Please provide your views as to whether the ICE Trade Vault application and the associated policies and procedures (including technical specifications for submission of data) provide sufficient information to potential Participants about how they would discharge these regulatory duties when reporting to ICE Trade Vault. In particular, please provide your views as to whether ICE Trade Vault's technical specifications for submission of data are sufficiently detailed, especially with regard to historical SBSs and bespoke SBS. Please describe in detail what additional information you believe is necessary to allow you to satisfy any reporting obligation you may incur under Regulation SBSR.

19. Rule 906(a) of Regulation SBSR provides, in relevant part, that a Participant of the registered SDR must provide the missing information with respect to its side of each SBS referenced in the report to the registered SDR within 24 hours. ICE Trade Vault has represented that a non-reporting-side participant must be fully onboarded before it may submit information that it is required to provide to a registered SDR by Rule 906(a) of Regulation SBSR. Please provide your views as to whether this form of access afforded to the non-reporting-side is fair, open, and not unreasonably discriminatory.

20. Please provide your views as to whether ICE Trade Vault's policies and procedures relating to Rule 906(a) are sufficiently detailed, appropriate and reasonably designed to ensure data accuracy and completeness.

21. Please provide your views as to whether ICE Trade Vault has provided sufficient information to explain the SBS transaction information that it would publicly disseminate to discharge its duties under Rule 902 of Regulation SBSR. Please describe any additional information that you feel is necessary. Please offer any suggestions generally for how the publicly disseminated information could be made more useful.

22. Please provide your views as to whether ICE Trade Vault has provided sufficient information to explain how Participants would be required to report life cycle events under Rule 901(e). Please describe any additional information that you feel is necessary. In particular, please indicate whether you believe ICE Trade Vault's specifications are reasonably designed to identify the specific data element(s) that change and thus that trigger the report of the life cycle event.

23. Please provide your views as to whether ICE Trade Vault has provided sufficient information about how an agent could report SBS transaction information to ICE Trade Vault on behalf of a principal (*i.e.,* a person who has a duty under Regulation SBSR to report). Please describe any additional information that is necessary. In particular, please provide your views as to whether ICE Trade Vault should differentiate between agents who are Participants of ICE Trade Vault because they themselves at times are principals (*i.e.,* they are counterparties to one or more SBSs that are reported to ICE Trade Vault on a mandatory basis) and agents who are never principals (*e.g.,* a vendor).

24. Please provide your views as to whether ICE Trade Vault's policies and procedures for developing condition flags for transactions having special characteristics under Rule 907(a)(4) of Regulation SBSR are consistent with the goal of preventing market participants without knowledge of these characteristics receiving a distorted view of the market. Are there additional condition flags that you believe ICE Trade Vault should utilize? If so, please describe them and why you believe they are appropriate.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (***http://www.sec.gov/rules/proposed.shtml***); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SBSDR–2016–01 on the subject line.

Paper Comments

- Send paper comments to Brent J. Fields, Secretary, Securities and

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[116] *See* Regulation SBSR Adopting Release, 80 FR at 14648.

Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. All submissions should refer to File Number SBSDR–2016–01.

To help the Commission process and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/other.shtml*).

Copies of the Form SDR, all subsequent amendments, all written statements with respect to the Form SDR that are filed with the Commission, and all written communications relating to the Form SDR between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SBSDR–2016–01 and should be submitted on or before May 31, 2016.

By the Commission.

Brent J. Fields,

Secretary.

[FR Doc. 2016–09931 Filed 4–27–16; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 9537]

Notice of Charter Renewal: The Department of State Has Renewed the Charter of the Advisory Committee on International Communications and Information Policy (ACICIP) for a Period of Two Years

The Committee serves the Department of State in a solely advisory capacity regarding current issues and concerns affecting international communications and information policy. ACICIP members are private sector communications and information technology policy specialists from U.S. telecommunications companies, trade associations, policy institutions, and academia.

For further information, please call Joseph Burton, Executive Secretary, Advisory Committee on International Communications and Information Policy, Office of Communications and Information Policy, Economic and Business Affairs Bureau, U.S. Department of State at (202) 647–5231.

Dated: April 21, 2016.

Joseph Burton,

Designated Federal Officer, U.S. Department of State.

[FR Doc. 2016–09976 Filed 4–27–16; 8:45 am]

BILLING CODE 4710–AE–P

DEPARTMENT OF STATE

[Public Notice: 9538]

Fine Arts Committee Notice of Meeting

The Fine Arts Committee of the Department of State will meet on June 10, 2016 at 10:00 a.m. in the Henry Clay Room of the Harry S. Truman Building, 2201 C Street NW., Washington, DC. The meeting will last until approximately 12:00 p.m. and is open to the public.

The agenda for the committee meeting will include a summary of the work of the Fine Arts Office since its last meeting on November 6, 2015 and the announcement of gifts and loans of furnishings as well as financial contributions from January 1, 2015 through December 31, 2015.

Public access to the Department of State is strictly controlled and space is limited. Members of the public wishing to take part in the meeting should telephone the Fine Arts Office at (202) 647–1990 or send an email to *SellmanCT@state.gov* by May 27 to make arrangements to enter the building. The public may take part in the discussion as long as time permits and at the discretion of the chairman.

Dated: April 22, 2016.

Marcee Craighill,

Fine Arts Committee, Department of State.

[FR Doc. 2016–09974 Filed 4–27–16; 8:45 am]

BILLING CODE 4710–24–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36021]

Finger Lakes Railway Corp.—Sublease and Operation Exemption—Cayuga County Industrial Development Agency, Onondaga County Industrial Development Agency, Ontario County Industrial Development Agency, Schuyler County Industrial Development Agency, and Yates County Industrial Development Agency

Finger Lakes Railway Corp. (FGLK), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to sublease from Cayuga County Industrial Development Agency, Onondaga County Industrial Development Agency, Ontario County Industrial Development Agency, Schuyler County Industrial Development Agency, and Yates County Industrial Development Agency (collectively, Agencies), and operate, approximately 86.45 miles of rail lines located in New York, as follows: (1) Watkins Glen Industrial Track, located between milepost 41.35 at or near Penn Yan and milepost 16.55 at or near Watkins Glen, in Schuyler and Yates Counties, a distance of 24.8 miles; (2) Canandaigua Secondary, located between milepost 76.00 at or near Canandaigua and milepost 51.30 at or near Geneva, in Ontario County, a distance of 24.70 miles; (3) Auburn Secondary, located between milepost 37.56 at the Seneca/Cayuga County line and milepost 3.61 at or near Solvay Yard, in Cayuga County, a distance of 33.95 miles; (4) Geneva Running Track, located between milepost 344.40 at or near Geneva and milepost 342.8 at the Ontario/Seneca County line, in Ontario County, a distance of 1.6 miles; (5) Lehigh & Northern Industrial Track, located between milepost 349.20 and milepost 348.70 at or near Auburn, in Cayuga County, a distance of 0.90 miles; and (6) Auburn & Ithaca Industrial Track, located between milepost 349.20 and milepost 348.70 at or near Auburn, in Cayuga County, a distance of 0.50 miles. The Agencies and FGLK state that the Agencies currently own the rail lines but FGLK is responsible for all railroad operations over the rail lines.

According to FGLK, the sublease of the rail lines is part of a series of proposed transactions that will allow FGLK to continue to pay a negotiated "payment in lieu of taxes" (PILOT) while maintaining the benefit of being exempt from local and state taxes. FGLK states that it originally acquired the rail lines in 1995 and transferred title to the Agencies and then leased back the rail lines for purposes of the PILOT arrangement. FGLK states that to extend and restructure the PILOT arrangement, the Agencies will first transfer title to the rail lines to FGLK. Then the Agencies will lease the rail lines from FGLK.[1] Lastly, FGLK will sublease the rail lines back from the Agencies to continue operations over them, including all common carrier service and maintenance of the tracks—the transaction at issue in this docket.

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[1] FGLK and the Agencies jointly filed one notice for these two related transactions in Dockets No. FD 36011 and FD 36012. Notices of the exemptions were served and published in the **Federal Register** on March 31, 2016 (81 FR 18,681–83). The Agencies also filed a motion to dismiss the notice of exemption in Docket No. FD 36011 on the grounds that the transaction does not require authorization from the Board. That motion will be addressed in a separate decision.

FGLK certifies that proposed transaction does not include an interchange commitment.

FGLK states that this transaction will not result in the creation of a Class II or Class I rail carrier, but that its projected revenues as a result of this transaction would exceed $5 million. Accordingly, under 49 CFR 1150.42(e), FGLK is required, at least 60 days before this exemption is to become effective, to send notice of the transaction to the national offices of the labor unions with employees on the affected lines, post a copy of the notice at the workplace of the employees on the affected lines, and certify to the Board that it has done so. FGLK, however, has filed a petition for waiver of this 60-day advance labor notice requirement, asserting that there will be no changes for employees working on the rail lines because FGLK already operates the rail lines and will continue to be the sole common carrier operator of the rail lines. FGLK's waiver request will be addressed in a separate decision.

FGLK states that the parties intend to consummate the transaction no sooner than May 12, 2016, the effective date of the exemption (30 days after the verified notice was filed), and only after the Board has ruled on the motion to dismiss in Docket No. FD 36011. The Board will establish in the decision on the waiver request the earliest date this transaction can be consummated.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than May 5, 2016 (at least seven days before the exemption becomes effective).

An original and ten copies of all pleadings, referring to Docket No. FD 36021, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eric M. Hocky, Clark Hill PLC, 2005 Market Street, Suite 1000, Philadelphia, PA 19103.

According to FGLK, this action is categorically excluded from environmental review under 49 CFR 1105.6(c).

Board decisions and notices are available on our Web site at "*WWW.STB.DOT.GOV.*"

Decided: April 25, 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Brendetta S. Jones,

Clearance Clerk.

[FR Doc. 2016–09950 Filed 4–27–16; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Research, Engineering and Development Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of the Research, Engineering & Development Advisory Committee meeting.

DATES: The meeting will be held on May 26, 2016—9:00 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the Federal Aviation Administration, 800 Independence Avenue SW., Round Room (10th Floor), Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Chinita A. Roundtree-Coleman at (609) 485–7149 or Web site at *chinita.roundtree-coleman@faa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2), notice is hereby given of a meeting of the Research, Engineering and Development (RE&D) Advisory Committee. The meeting agenda will include receiving from the Committee guidance for FAA's research and development investments in the areas of air traffic services, airports, aircraft safety, human factors and environment and energy. Attendance is open to the interested public but seating is limited. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to attend the meeting, present statements, or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on April 17, 2016.

Chinita A. Roundtree-Coleman,

Computer Specialist.

[FR Doc. 2016–10010 Filed 4–27–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA–2016–4756]

Reduction of Remote Communications Outlets Used by Flight Service Stations in the Conterminous United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed policy.

SUMMARY: The FAA is proposing to reduce the number of radio frequencies used by flight service stations to communicate with aircraft in flight. Under the proposal, six hundred and sixty-six (666) remote communications outlets (RCOs) will be decommissioned. Frequencies especially designated for emergency or military use are not included in this proposal. Frequencies in the state of Alaska are also not included in this proposal.

DATES: Submit comments on or before June 27, 2016.

ADDRESSES: You may send comments identified by docket number FAA–2016–4756 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Alan Wilkes, Manager, Flight Service National Efficient Streamlined Services (FSNESS) Initiative, Operations and Implementation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–7771; Fax (202) 267–6310; email *Alan.Wilkes@faa.gov.* Jeff Black, Quality Assurance Evaluator, Flight Services Program Operations; telephone (940) 584–0409; email *Jeff.Black@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Federal Aviation Administration maintains a network of over 2,100 remote communications outlets (RCOs) throughout the conterminous United States, Hawaii and Puerto Rico. The RCOs are used by its contract service provider, Lockheed Martin Flight Services (LMFS), to communicate with pilots in flight. Pilots can obtain weather briefings, file flight plans and receive numerous other services by using these frequencies.

The frequency infrastructure currently in use was developed nearly 50 years ago, with little or no modifications since. In 2005, LMFS took over flight service operations at 58 locations in the Conterminous United States (CONUS), Puerto Rico, and Hawaii. In doing so, it inherited a vast network of 2,162 frequencies used to provide a variety of services. For example, 347 frequencies are designated for emergency use only and 194 frequencies are designated for military use only. These 541 frequencies are not being considered for removal. The remaining 1,621 frequencies can be divided into two groups.

(1) Remote communications outlets in which aircraft can contact a flight service station by transmitting and receiving on a common or discrete frequency, for example, 122.2, 122.5, etc. There are 1,223 RCOs in the CONUS.

(2) Frequencies that are co-located with navigational aids known as VORs in which aircraft can contact flight service by transmitting on a frequency (usually 122.1) and receiving on the appropriate VOR frequency. There are 398 VOR frequencies in the CONUS.

The 1,621 frequencies cover a vast majority of the conterminous United States and include duplicate, overlapping and seldom used frequencies. Last year, FAA contracted the MITRE Corporation to study the areas covered by RCO and VOR frequencies for possible removal without significantly impacting the area of coverage. The study concluded that as many as 666 frequencies could be removed and still provide 99–100% coverage at 5,000 feet; 98–100% coverage at 3,000 feet; and 93–100% coverage at 1,000 feet.

The FAA proposes to begin decommissioning 666 remote communications outlets in the Conterminous United States, Puerto Rico, and Hawaii in late 2017. Several types of frequencies are *not* considered a part of this proposal: Frequencies especially designated for emergency or military use; frequencies in the state of Alaska; and Ground Communications Outlets (frequencies used by pilots while still on the ground).

By reducing radio coverage, the Agency estimates that it can save approximately $2.5 million annually in maintenance costs alone. Additionally, more savings will be realized once property leases are terminated and voice-switch communications infrastructure is decreased.

By soliciting comment to this notice, the FAA seeks to address public concerns and will consider any comments in determining whether to change the policy.

Applicability

A link to the frequencies proposed for decommissioning can be found here: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/media/RCO_Master_List.pdf.*

Also, a link to maps showing frequency coverage throughout the United States at various altitudes, with percentages of coverage can be found here: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/media/Radio_Reduction_Fed_Reg.pdf.*

II. Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this notice by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the notice in this document. The most helpful comments reference a specific portion of the notice, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this action. Before acting on this notice, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this notice in light of the comments it receives.

Proprietary or Confidential Business Information: Do not file proprietary or confidential business information in the docket. Such information must be sent or delivered directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document, and marked as proprietary or confidential. If submitting information on a disk or CD–ROM, mark the outside of the disk or CD–ROM, and identify electronically within the disk or CD–ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), if the FAA is aware of proprietary information filed with a comment, the agency does not place it in the docket. It is held in a separate file to which the public does not have access, and the FAA places a note in the docket that it has received it. If the FAA receives a request to examine or copy this information, it treats it as any other request under the Freedom of Information Act (5 U.S.C. 552). The FAA processes such a request under Department of Transportation procedures found in 49 CFR part 7.

B. Availability of Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);
2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies* or
3. Accessing the Government Printing Office's Web page at *http://www.gpo.gov/fdsys/.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Commenters must identify the docket or amendment number of this notice.

All documents the FAA considered in developing this notice, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

Issued in Washington, DC, on April 20, 2016.

Steven Villanueva,

Acting Director of Flight Service.

[FR Doc. 2016–09992 Filed 4–27–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2016–0012]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by June 27, 2016.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 2016–0012 by any of the following methods:

Web Site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Ferroni, 202–366–3233, or Aileen Varela-Margolles, 202–366–1701, Office of Environment, Planning and Realty, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 7 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Comment collection on the draft Traffic Noise Model's (TNM) 3.0 Model Performance and Usability.

Background: 23 CFR 772 *Procedures for Abatement of Highway Traffic Noise and Construction Noise* Section 772.9(a) states that 'any analysis required by this subpart must use the FHWA [Federal Highway Administration] Traffic Noise Model (TNM)'. This noise model is required for conducting traffic noise impact analysis in accordance with 23 CFR 772.11 and 23 CFR 772.13.

As part of FHWAs ongoing efforts to address traffic noise impacts of highway projects on local communities, FHWA recently completed a new version of TNM. The draft TNM version 3.0 features a new User Interface (UI), updated acoustical information, and interoperability with the software packages for Esri's ArcGIS®, AutoDesk's AutoCAD®, and Bentley's MicroStation®. FHWA is releasing TNM version 3.0 as a draft to provide the public with an opportunity to use the model and become familiar with its functionality and UI. FHWA will review any comments and make necessary adjustment to the model before releasing a final version for use in highway noise impact analysis for Federal Aid Highway projects in the future.

The release of the draft TNM version 3.0 builds upon an earlier beta test by eight State Departments of Transportation (Georgia, Michigan, Minnesota, North Carolina, Ohio, Texas, Virginia, and Washington State). The beta testers provided valuable input to further improve the model's UI. By releasing the draft TNM version 3.0, FHWA is allowing users to provide comments and feedback on the model in general including the model's functionality, its interface with the software packages and its usability for a variety of project types. In order to encourage users to submit their comments, FHWA will set up an online portal on FHWA TNM version 3.0 Web site (*http://www.fhwa.dot.gov/environment/noise/traffic_noise_model/tnm_v30/*) to collect comments in several broad categories such as functionality and aesthetics of the UI, interoperability with the external software packages, and the performance of the updated acoustics. This online portal will contain standardized questions to guide the public to submit their comments. It is this portal and its questions which are the subject of this OMB ICR FR Notice.

Persons who elect to provide comments on the draft TNM version 3.0 will have to download the free software via the FHWA TNM version 3.0 Web site at: *http://www.fhwa.dot.gov/environment/noise/traffic_noise_model/tnm_v30/*. Participation by using the model and providing comments is entirely voluntary.

Respondents: Approximately 200 participants including the 52 State DOTs, consultant/contractors, researchers, academia and other interested transportation and environmental stakeholders.

Frequency: As needed. It is expected that users will input comments when they review the draft TNM version 3.0.

Estimated Average Burden per Response: Estimated time is approximately two weeks (80 hours) per participant over six months. Time will depend on the number and complexity of the situations the user is modeling.

Estimated Total Annual Burden Hours: Approximately 64,000 hours over six months.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's draft TNM version 3.0 model performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: April 22, 2016.

Michael Howell,

Information Collections Officer.

[FR Doc. 2016–09944 Filed 4–27–16; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0037]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 47 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial

motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before May 31, 2016.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2016–0037 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 47 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

II. Qualifications of Applicants

Richard B. Aungier

Mr. Aungier, 68, has had ITDM since 2013. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Aungier understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Aungier meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Montana.

Christopher R. Barwick

Mr. Barwick, 32, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Barwick understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Barwick meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Carolina.

Richard D. Bentley

Mr. Bentley, 51, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bentley understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bentley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

Jeffrey C. Bergen

Mr. Bergen, 53, has had ITDM since 1982. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bergen understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bergen meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Massachusetts.

Stephen G. Bowen

Mr. Bowen, 53, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bowen understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bowen meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

Christopher J. Burgess

Mr. Burgess, 42, has had ITDM since 2010. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Burgess understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Burgess meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Idaho.

Edward D. Burman

Mr. Burman, 53, has had ITDM since 2011. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Burman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Burman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Massachusetts.

Lynn J. Clark

Mr. Clark, 69, has had ITDM since 2011. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Clark understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Clark meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Utah.

Jamie A. Davidson

Mr. Davidson, 44, has had ITDM since 2005. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Davidson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Davidson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Minnesota.

Kenneth W. Day

Mr. Day, 69, has had ITDM since 2004. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Day understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Day meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative and proliferative diabetic retinopathy. He holds a Class A CDL from Tennessee.

Horace Dickinson

Mr. Dickinson, 59, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Dickinson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Dickinson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Georgia.

Roy A. Duering

Mr. Duering, 58, has had ITDM since 2013. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Duering understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Duering meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Howard J. Easter III

Mr. Easter, 62, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Easter understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Easter meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Virginia.

James R. Fifield

Mr. Fifield, 61, has had ITDM since 2007. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Fifield understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Fifield meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class C CDL from Michigan.

Scott A. Figert

Mr. Figert, 56, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Figert understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Figert meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Christopher E. Francklyn

Mr. Francklyn, 25, has had ITDM since 2006. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Francklyn understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Francklyn meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Colorado.

Larry D. Funk

Mr. Funk, 53, has had ITDM since 2013. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Funk understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Funk meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Kansas.

Mitchell P. Gibson

Mr. Gibson, 40, has had ITDM since 1981. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Gibson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gibson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class C CDL from Michigan.

Steven S. Gray

Mr. Gray, 33, has had ITDM since 1992. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Gray understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gray meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from Connecticut.

Donald F. Greel, Jr.

Mr. Greel, 56, has had ITDM since 2001. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Greel understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Greel meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Massachusetts.

Rosemary M. Holland

Ms. Holland, 47, has had ITDM since 1983. Her endocrinologist examined her in 2015 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Holland understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Holland meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2015 and certified that she does not have diabetic retinopathy. She holds an operator's license from Texas.

John A. Jung

Mr. Jung, 51, has had ITDM since 1997. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Jung understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jung meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Ohio.

Jerry H. Kahn

Mr. Kahn, 52, has had ITDM since 2011. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kahn understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kahn meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

James J. Kramer

Mr. Kramer, 25, has had ITDM since 1997. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kramer understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kramer meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

Sean T. Lewis

Mr. Lewis, 48, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Lewis understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lewis meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New Jersey.

Edwin Lozada

Mr. Lozada, 48, has had ITDM since 2003. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Lozada understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lozada meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Florida.

Kevin S. Martin

Mr. Martin, 58, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Martin understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Martin meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Allysa B. Meirowitch

Ms. Meirowitch, 37, has had ITDM since 2001. Her endocrinologist examined her in 2016 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Meirowitch understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Meirowitch meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2016 and certified that she does not have diabetic retinopathy. She holds an operator's license from New York.

Darren D. Mish

Mr. Mish, 47, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Mish understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mish meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Wisconsin.

Brian L. Murray

Mr. Murray, 59, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Murray understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Murray meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Washington.

Thomas V. Noyes

Mr. Noyes, 54, has had ITDM since 1986. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Noyes understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Noyes meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from Massachusetts.

Benny M. Perez

Mr. Perez, 60, has had ITDM since 2011. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Perez understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Perez meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

Gregory S. Pethtel

Mr. Pethtel, 53, has had ITDM since 1977. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Pethtel understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Pethtel meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable proliferative diabetic retinopathy. He holds a Class A CDL from Ohio.

Thomas J. Price

Mr. Price, 62, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Price understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Price meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wyoming.

Theodore D. Reagle

Mr. Reagle, 48, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Reagle understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Reagle meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

Eric A. Richie

Mr. Richie, 25, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Richie understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Richie meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Arizona.

Joseph Romano

Mr. Romano, 52, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Romano understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Romano meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New York.

Keith E. Shumake

Mr. Shumake, 45, has had ITDM since 1985. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Shumake understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Shumake meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Colorado.

William G. Simpson

Mr. Simpson, 63, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Simpson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Simpson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Colorado.

Joseph A. Sisk

Mr. Sisk, 67, has had ITDM since 2010. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Sisk understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sisk meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Mississippi.

Elmer L. Sprouse

Mr. Sprouse, 79, has had ITDM since 2001. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Sprouse understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sprouse meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Nevada.

Stirling H. C. Sowerby

Mr. Sowerby, 67, has had ITDM since 1988. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Sowerby understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sowerby meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

John J. Steele

Mr. Steele, 64, has had ITDM since 2002. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Steele understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Steele meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable proliferative diabetic retinopathy. He holds a Class A CDL from Alabama.

Ryan M. Stumbaugh

Mr. Stumbaugh, 33, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Stumbaugh understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Stumbaugh meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

David J. Walker

Mr. Walker, 54, has had ITDM since 1981. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Walker understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Walker meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from Iowa.

Shawn D. Weigel

Mr. Weigel, 39, has had ITDM since 1992. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Weigel understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Weigel meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Kansas.

William H. Yocum

Mr. Yocum, 58, has had ITDM since 2001. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Yocum understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Yocum meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Missouri.

III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR

52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C.. 31136 (e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

IV. Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2016–0037 and click the search button. When the new screen appears, click on the blue "Comment Now!" button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period. FMCSA may issue a final determination at any time after the close of the comment period.

V. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2016–0037 and click "Search." Next, click "Open Docket Folder" and you will find all documents and comments related to this notice.

Issued on: April 21, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–09910 Filed 4–27–16; 8:45 am]

BILLING CODE 4910–EX–P

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[1] Section 4129(a) refers to the 2003 notice as a "final rule." However, the 2003 notice did not issue a "final rule" but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

DEPARTMENT OF THE TREASURY

Proposed Collection; Comment Request

AGENCY: Departmental Offices, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on an extension of an existing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The Office of the Fiscal Assistant Secretary, within the Department of the Treasury, is soliciting comments concerning the application, reports, and recordkeeping for the Direct Component and the Centers of Excellence Research Grants Program under the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act) *https://www.treasury.gov/services/restore-act/Pages/propose-revisions-to-forms-and-reports.aspx.*

DATES: Written comments should be received on or before June 27, 2016 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, by electronic mail to *restoreact@treasury.gov* or contact Janet Vail at 202–622–6873 in the Office of Gulf Coast Restoration.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Janet Vail at 202–622–6873 in the Office of Gulf Coast Restoration or by electronic mail to *restoreact@treasury.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1505–0250.

Title: Application, Reports, and Recordkeeping for the Direct Component and the Centers of Excellence Research Grants Program under the RESTORE Act.

Abstract: The Department of the Treasury administers the Direct Component and the Centers of Excellence Research Grants Program authorized under the RESTORE Act. Treasury awards grants for these two programs from proceeds in connection with administrative and civil penalties paid after July 6, 2012, under the Federal Water Pollution Control Act relating to the *Deepwater Horizon* Oil Spill, and deposited into the Gulf Coast Restoration Trust Fund. Direct Component grants are awarded to the States of Alabama, Louisiana, Mississippi, and Texas, and 23 Florida counties and 20 Louisiana parishes and Centers of Excellence grants are awarded to the States of Alabama, Florida, Louisiana, Mississippi, and Texas. The information collection for both programs identifies the eligible recipients; describes proposed activities; determines an appropriate amount of funding; ensures compliance with the RESTORE Act, Treasury's regulations, and Federal laws and policies on grants; tracks grantee progress; and reports on the effectiveness of the programs.

Type of Review: Revision of a currently approved collection.

Affected Public: State, Local, or Tribal Governments.

Estimated Number of Respondents: 52.

Estimated Annual Responses: 385.6.

Estimated Total Annual Burden Hours: 6,142.

Request for Comment: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. Comments may become a matter of public record. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 25, 2016.

Brenda Simms,

Treasury PRA Clearance Officer.

[FR Doc. 2016–09943 Filed 4–27–16; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

Solicitation of Nominations for Appointment to the Advisory Committee on Minority Veterans

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA), Center for Minority Veterans (CMV), is seeking nominations of qualified candidates to be considered for appointment as a member of the Advisory Committee on Minority Veterans ("the Committee"). In accordance with 38 U.S.C. 544, the Committee advises the Secretary on the administration of VA benefits and services to minority Veterans; assesses the needs of minority Veterans with respect to such benefits; and evaluates whether VA compensation, medical and rehabilitation services, outreach, and other programs are meeting those needs. The Committee makes recommendations to the Secretary regarding such activities. Nominations of qualified candidates are being sought to fill upcoming vacancies on the Committee.

Authority: The Committee was established in accordance with 38 U.S.C. 544 (Pub. L. 103–446, Sec 510).

DATES: Nominations for membership on the Committee must be received no later than 5:00 p.m. EST on May 13, 2016.

ADDRESSES: All nominations should be mailed to the Center for Minority Veterans, Department of Veterans Affairs, 810 Vermont Ave. NW. (00M), Washington, DC 20420, or faxed to (202) 273–7092.

FOR FURTHER INFORMATION CONTACT: Ms. Juanita J. Mullen, Center for Minority Veterans, Department of Veterans Affairs, 810 Vermont Ave. NW. (00M), Washington, DC 20420, Telephone (202) 461–6191. A copy of the Committee charter and list of the current membership can be obtained by contacting Ms. Mullen or by accessing the Web site managed by CMV at *www.va.gov/centerforminorityveterans/Advisory_Committee.asp.*

SUPPLEMENTARY INFORMATION: The Committee was established pursuant to 38 U.S.C. 544. The Committee responsibilities include:

(1) Advising the Secretary and Congress on VA's administration of benefits and provisions of healthcare, benefits, and services to minority Veterans.

(2) Providing an annual report to Congress outlining recommendations, concerns and observations on VA's delivery of services to minority Veterans.

(3) Meeting with VA Officials, Veteran Service Organizations, and other stakeholders to assess the Department's efforts in providing benefits and outreach to minority Veterans.

(4) Making periodic site visits and holding town hall meetings with Veterans to address their concerns.

Management and support services for the Committee are provided by the Center for Minority Veterans (CMV).

Membership Criteria

CMV is requesting nominations for upcoming vacancies on the Committee. The Committee is currently composed of 12 members, in addition to ex-officio members. As required by statute, the members of the Committee are appointed by the Secretary from the general public, including:

(1) Representatives of Veterans who are minority group members;

(2) Individuals who are recognized authorities in fields pertinent to the needs of Veterans who are minority group members;

(3) Veterans who are minority group members and who have experience in a military theater of operations;

(4) Veterans who are minority group members and who do not have such experience and;

(5) Women Veterans who are minority group members recently separated from active military service.

Section 544 defines "minority group member" as an individual who is Asian American, Black, Hispanic, Native American (including American Indian, Alaska Native, and Native Hawaiian); or Pacific-Islander American.

In accordance with § 544, the Secretary determines the number, terms of service, and pay and allowances of members of the Committee appointed by the Secretary, except that a term of service of any such member may not exceed three years. The Secretary may reappoint any member for additional terms of service.

Professional Qualifications

In addition to the criteria above, VA seeks—

(1) Diversity in professional and personal qualifications;

(2) Experience in military service and military deployments (please identify Branch of Service and Rank);

(3) Current work with Veterans;

(4) Committee subject matter expertise;

(5) Experience working in large and complex organizations;

Requirements for Nomination Submission

Nominations should be type written (one nomination per nominator). Nomination package should include: (1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.* specific attributes which qualify the nominee for service in this capacity), and a statement from the nominee indicating a willingness to serve as a member of the Committee; (2) the nominee's contact information, including name, mailing address, telephone numbers, and email address; (3) the nominee's curriculum vitae, and (4) a summary of the nominee's experience and qualification relative to the *professional qualifications* criteria listed above.

Individuals selected for appointment to the Committee shall be invited to serve a two-year term. Committee members will receive a stipend for attending Committee meetings, including per diem and reimbursement for travel expenses incurred.

The Department makes every effort to ensure that the membership of its Federal advisory committees is fairly balanced in terms of points of view represented and the committee's function. Every effort is made to ensure that a broad representation of geographic areas, males & females, racial and ethnic minority groups, and the disabled are given consideration for membership. Appointment to this Committee shall be made without discrimination because of a person's race, color, religion, sex (including gender identity, transgender status, sexual orientation, and pregnancy), national origin, age, disability, or genetic information. Nominations must state that the nominee is willing to serve as a member of the Committee and appears to have no conflict of interest that would preclude membership. An ethics review is conducted for each selected nominee.

Dated: April 22, 2016.

Jelessa Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2016–09921 Filed 4–27–16; 8:45 am]

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Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 418

Medicare Program; FY 2017 Hospice Wage Index and Payment Rate Update and Hospice Quality Reporting Requirements; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 418

[CMS–1652–P]

RIN 0938–AS79

Medicare Program; FY 2017 Hospice Wage Index and Payment Rate Update and Hospice Quality Reporting Requirements

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would update the hospice wage index, payment rates, and cap amount for fiscal year (FY) 2017. In addition, this rule proposes changes to the hospice quality reporting program, including proposing new quality measures. The proposed rule also solicits feedback on an enhanced data collection instrument and describes plans to publicly display quality measures and other hospice data beginning in the middle of 2017. Finally, this proposed rule includes information regarding the Medicare Care Choices Model (MCCM).

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on June 20, 2016.

ADDRESSES: In commenting, please refer to file code CMS–1652–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the "Submit a comment" instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1652–P, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1652–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses prior to the close of the comment period:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Debra Dean-Whittaker, (410) 786 -0848 for questions regarding the CAHPS® Hospice Survey.

Michelle Brazil, (410) 786–1648 for questions regarding the hospice quality reporting program.

For general questions about hospice payment policy, please send your inquiry via email to: *hospicepolicy@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION: Wage index addenda will be available only through the internet on the CMS Web site at: (*http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/index.html.*)

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

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Acronyms

Because of the many terms to which we refer by acronym in this proposed rule, we are listing the acronyms used and their corresponding meanings in alphabetical order:

APU Annual Payment Update
ASPE Assistant Secretary of Planning and Evaluation
BBA Balanced Budget Act of 1997
BETOS Berenson-Eggers Types of Service
BIPA Benefits Improvement and Protection Act of 2000
BNAF Budget Neutrality Adjustment Factor
BLS Bureau of Labor Statistics
CAHPS® Consumer Assessment of Healthcare Providers and Systems
CBSA Core-Based Statistical Area
CCN CMS Certification Number
CCW Chronic Conditions Data Warehouse
CFR Code of Federal Regulations
CHC Continuous Home Care
CHF Congestive Heart Failure
CMMI Center for Medicare & Medicaid Innovation
CMS Centers for Medicare & Medicaid Services
COPD Chronic Obstructive Pulmonary Disease
CoPs Conditions of Participation
CPI Center for Program Integrity
CPI–U Consumer Price Index-Urban Consumers
CR Change Request
CVA Cerebral Vascular Accident
CWF Common Working File
CY Calendar Year
DME Durable Medical Equipment
DRG Diagnostic Related Group
ER Emergency Room
FEHC Family Evaluation of Hospice Care
FR Federal Register
FY Fiscal Year
GAO Government Accountability Office
GIP General Inpatient Care
HCFA Healthcare Financing Administration
HHS Health and Human Services
HIPPA Health Insurance Portability and Accountability Act
HIS Hospice Item Set
HQRP Hospice Quality Reporting Program
IACS Individuals Authorized Access to CMS Computer Services
ICD–9–CM International Classification of Diseases, Ninth Revision, Clinical Modification
ICD–10–CM International Classification of Diseases, Tenth Revision, Clinical Modification
ICR Information Collection Requirement
IDG Interdisciplinary Group
IMPACT Act Improving Medicare Post-Acute Care Transformation Act of 2014
IOM Institute of Medicine
IPPS Inpatient Prospective Payment System
IRC Inpatient Respite Care
LCD Local Coverage Determination
MAC Medicare Administrative Contractor
MAP Measure Applications Partnership
MCCM Medicare Care Choices Model
MedPAC Medicare Payment Advisory Commission
MFP Multifactor Productivity
MSA Metropolitan Statistical Area
MSS Medical Social Services
NHPCO National Hospice and Palliative Care Organization
NF Long Term Care Nursing Facility
NOE Notice of Election
NOTR Notice of Termination/Revocation
NP Nurse Practitioner
NPI National Provider Identifier
NQF National Quality Forum
OIG Office of the Inspector General
OACT Office of the Actuary
OMB Office of Management and Budget
PEPPER Program for Evaluating Payment Patterns Electronic Report
PRRB Provider Reimbursement Review Board
PS&R Provider Statistical and Reimbursement Report
Pub. L Public Law
QAPI Quality Assessment and Performance Improvement
RHC Routine Home Care
RN Registered Nurse
SBA Small Business Administration
SEC Securities and Exchange Commission
SIA Service Intensity Add-on
SNF Skilled Nursing Facility
TEFRA Tax Equity and Fiscal Responsibility Act of 1982
TEP Technical Expert Panel
UHDDS Uniform Hospital Discharge Data Set
U.S.C. United States Code

I. Executive Summary for this Proposed Rule

A. Purpose

This rule proposes updates to the hospice payment rates for fiscal year (FY) 2017, as required under section 1814(i) of the Social Security Act (the Act). This rule also proposes new quality measures and provides an update on the hospice quality reporting program (HQRP) consistent with the requirements of section 1814(i)(5) of the Act, as added by section 3004(c) of the Patient Protection and Affordable Care Act (Pub. L. 111–148) as amended by the Health Care and Education Reconciliation Act (Pub. L. 111–152) (collectively, the Affordable Care Act). In accordance with section 1814(i)(5)(A) of the Act, starting in FY 2014, hospices that have failed to meet quality reporting requirements receive a 2 percentage point reduction to their payments. Finally, this proposed rule shares information on the Medicare Care Choices Model developed in accordance with the authorization under section 1115A of the Act for the Center for Medicare and Medicaid Innovation (CMMI) to test innovative payment and service models that have the potential to reduce Medicare, Medicaid, or Children's Health Insurance Program (CHIP) expenditures while maintaining or improving the quality of care.

B. Summary of the Major Provisions

Section III.A of this proposed rule describes current trends in hospice utilization and provider behavior, as well as our efforts for monitoring potential impacts related to the hospice reform policies finalized in the FY 2016 Hospice Wage Index and Payment Rate Update final rule (80 FR 47142). In section III.B.1 of this proposed rule, we propose to update the hospice wage index with updated wage data and to make the application of the updated wage data budget neutral for all four levels of hospice care. In section III.B.2 we discuss the FY 2017 hospice payment update percentage of 2.0 percent. Sections III.B.3 and III.B.4 update the hospice payment rates and hospice cap amount for FY 2017 by the hospice payment update percentage discussed in section III.B.2.

In section III.C of this proposed rule, we discuss updates to HQRP, including the proposal of two new quality measures as well as of the possibility of utilizing a new assessment instrument to collect quality data. As part of the HQRP, the new proposed measures would be: (1) Hospice Visits When Death is Imminent, assessing hospice staff visits to patients and caregivers in the last week of life; and (2) Hospice and Palliative Care Composite Process Measure, assessing the percentage of hospice patients who received care processes consistent with existing guidelines. In section III.C we will also discuss the potential enhancement of the current Hospice Item Set (HIS) data collection instrument to be more in line with other post-acute care settings. This new data collection instrument would be a comprehensive patient assessment instrument, rather than the current chart abstraction tool. Additionally, in this section we discuss our plans for sharing HQRP data publicly during Calendar Year (CY) 2016 as well as plans to provide public reporting via a Compare Site in CY 2017.

Finally, in section III.D, we are providing information regarding the Medicare Care Choices Model (MCCM). This model offers a new option for Medicare and dual eligible beneficiaries with certain advanced diseases who meet the model's other eligibility criteria to receive hospice-like support services from MCCM participating hospices while receiving care from other Medicare providers for their terminal illness. This model is designed to: (1) Increase access to supportive care services provided by hospice; (2) improve quality of life and patient/family/caregiver satisfaction; and (3) inform new payment systems for the Medicare and Medicaid programs.

C. Summary of Impacts

TABLE 1—IMPACT SUMMARY

Provision description	Transfers
FY 2017 Hospice Wage Index and Payment Rate Update.	The overall economic impact of this proposed rule is estimated to be $330 million in increased payments to hospices during FY 2017.

II. Background

A. Hospice Care

Hospice care is an approach to treatment that recognizes that the impending death of an individual warrants a change in the focus from curative care to palliative care for relief of pain and for symptom management. The goal of hospice care is to help terminally ill individuals continue life with minimal disruption to normal activities while remaining primarily in the home environment. A hospice uses an interdisciplinary approach to deliver medical, nursing, social, psychological, emotional, and spiritual services through use of a broad spectrum of professionals and other caregivers, with the goal of making the beneficiary as physically and emotionally comfortable as possible. Hospice is compassionate beneficiary and family-centered care for those who are terminally ill. It is a comprehensive, holistic approach to treatment that recognizes that the impending death of an individual necessitates a transition from curative to palliative care.

Medicare regulations define "palliative care" as "patient and family-centered care that optimizes quality of life by anticipating, preventing, and treating suffering. Palliative care throughout the continuum of illness involves addressing physical, intellectual, emotional, social, and spiritual needs and to facilitate patient autonomy, access to information, and choice." (42 CFR 418.3) Palliative care is at the core of hospice philosophy and care practices, and is a critical component of the Medicare hospice benefit. *See also* Hospice Conditions of Participation final rule (73 FR 32088 June 5, 2008). The goal of palliative care in hospice is to improve the quality of life of beneficiaries, and their families, facing the issues associated with a life-threatening illness through the prevention and relief of suffering by means of early identification, assessment and treatment of pain and other issues that may arise. This is achieved by the hospice interdisciplinary team working with the beneficiary and family to develop a comprehensive care plan focused on coordinating care services, reducing unnecessary diagnostics or ineffective therapies, and offering ongoing conversations with individuals and their families about changes in their condition. The beneficiary's comprehensive care plan will shift over time to meet the changing needs of the individual, family, and caregiver(s) as the individual approaches the end of life.

Medicare hospice care is palliative care for individuals with a prognosis of living 6 months or less if the terminal illness runs its normal course. When a beneficiary is terminally ill, many health problems are brought on by underlying condition(s), as bodily systems are interdependent. In the 2008 Hospice Conditions of Participation final rule, we stated that "the medical director must consider the primary terminal condition, related diagnoses, current subjective and objective medical findings, current medication and treatment orders, and information about unrelated conditions when considering the initial certification of the terminal illness." (73 FR 32176). As referenced in our regulations at § 418.22(b)(1), to be eligible for Medicare hospice services, the patient's attending physician (if any) and the hospice medical director must certify that the individual is "terminally ill," as defined in section 1861(dd)(3)(A) of the Act and our regulations at § 418.3; that is, the individual's prognosis is for a life expectancy of 6 months or less if the terminal illness runs its normal course. The certification of terminal illness must include a brief narrative explanation of the clinical findings that supports a life expectancy of 6 months or less as part of the certification and recertification forms, as set out at § 418.22(b)(3).

While the goal of hospice care is to allow the beneficiary to remain in his or her home environment, circumstances during the end-of-life may necessitate short-term inpatient admission to a hospital, skilled nursing facility (SNF), or hospice facility for treatment necessary for pain control or acute or chronic symptom management that cannot be managed in any other setting. These acute hospice care services are to ensure that any new or worsening symptoms are intensively addressed so that the beneficiary can return to his or her home environment. Limited, short-term, intermittent, inpatient respite services are also available to the family/caregiver of the hospice patient to relieve the family or other caregivers. Additionally, an individual can receive continuous home care during a period of crisis in which an individual requires primarily continuous nursing care to achieve palliation or management of acute medical symptoms so that the individual can remain at home. Continuous home care may be covered on a continuous basis for as much as 24 hours a day, and these periods must be predominantly nursing care, in accordance with our regulations at § 418.204. A minimum of 8 hours of nursing care, or nursing and aide care, must be furnished on a particular day to qualify for the continuous home care rate (§ 418.302(e)(4)).

Hospices are expected to comply with all civil rights laws, including the provision of auxiliary aids and services to ensure effective communication with patients and patient care representatives with disabilities consistent with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, and to provide language access for such persons who are limited in English proficiency, consistent with Title VI of the Civil Rights Act of 1964. Further information about these requirements may be found at *http://www.hhs.gov/ocr/civilrights*.

B. History of the Medicare Hospice Benefit

Before the creation of the Medicare hospice benefit, hospice programs were originally operated by volunteers who cared for the dying. During the early development stages of the Medicare hospice benefit, hospice advocates were clear that they wanted a Medicare benefit that provided all-inclusive care for terminally-ill individuals, provided pain relief and symptom management, and offered the opportunity to die with dignity in the comfort of one's home rather than in an institutional setting.[1] As stated in the August 22, 1983 proposed rule entitled "Medicare Program; Hospice Care" (48 FR 38146), "the hospice experience in the United States has placed emphasis on home care. It offers physician services, specialized nursing services, and other forms of care in the home to enable the terminally ill individual to remain at home in the company of family and friends as long as possible." The concept of a beneficiary "electing" the hospice benefit and being certified as terminally ill were two key components of the legislation responsible for the creation of the Medicare Hospice Benefit (section 122 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), (Pub. L. 97–248)). Section 122 of TEFRA created the Medicare Hospice benefit, which was implemented on November 1, 1983. Under sections 1812(d) and 1861(dd) of the Act, we provide coverage of hospice care for terminally ill Medicare beneficiaries who elect to receive care from a Medicare-certified hospice. Our regulations at § 418.54(c) stipulate that the comprehensive hospice assessment must identify the beneficiary's physical, psychosocial, emotional, and spiritual needs related to the terminal illness and related conditions, and address those needs in order to promote the beneficiary's well-being, comfort, and dignity throughout the dying process. The comprehensive assessment must take into consideration the following factors: the nature and condition causing admission (including the presence or lack of objective data and subjective complaints); complications and risk factors that affect care planning; functional status; imminence of death; and severity of symptoms (§ 418.54(c)). The Medicare hospice benefit requires the hospice to cover all reasonable and necessary palliative care related to the terminal prognosis, as described in the beneficiary's plan of care. The December 16, 1983 Hospice final rule (48 FR 56008) requires hospices to cover care for interventions to manage pain and symptoms. Additionally, the hospice Conditions of Participation (CoPs) at § 418.56(c) require that the hospice must provide all reasonable and necessary services for the palliation and management of the terminal illness, related conditions, and interventions to manage pain and symptoms. Therapy and interventions must be assessed and managed in terms of providing palliation and comfort without undue symptom burden for the hospice patient or family.[2] In the December 16, 1983 Hospice final rule (48 FR 56010), regarding what is related versus unrelated to the terminal illness, we stated: ". . . we believe that the unique physical condition of each terminally ill individual makes it necessary for these decisions to be made on a case by case basis. It is our general view that hospices are required to provide virtually all the care that is needed by terminally ill patients." Therefore, unless there is clear evidence that a condition is unrelated to the terminal prognosis, all conditions are considered to be related to the terminal prognosis and the responsibility of the hospice to address and treat.

As stated in the December 16, 1983 Hospice final rule, the fundamental premise upon which the hospice benefit was designed was the "revocation" of traditional curative care and the "election" of hospice care for end-of-life symptom management and maximization of quality of life (48 FR 56008). After electing hospice care, the beneficiary typically returns to the home from an institutionalized setting or remains in the home, to be surrounded by family and friends, and to prepare emotionally and spiritually, if requested, for death while receiving expert symptom management and other supportive services. Election of hospice care also requires waiving the right to Medicare payment for curative treatment for the terminal prognosis, and instead receiving palliative care to manage pain or other symptoms.

The benefit was originally designed to cover hospice care for a finite period of time that roughly corresponded to a life expectancy of 6 months or less. Initially, beneficiaries could receive three election periods: Two 90-day periods and one 30-day period. Currently, Medicare beneficiaries can elect hospice care for two 90-day periods and an unlimited number of subsequent 60-day periods; however, at the beginning of each period, a physician must certify that the beneficiary has a life expectancy of 6 months or less if the terminal illness runs its normal course.

C. Services Covered by the Medicare Hospice Benefit

One requirement for coverage under the Medicare Hospice benefit is that hospice services must be reasonable and necessary for the palliation and management of the terminal illness and related conditions. Section 1861(dd)(1) of the Act establishes the services that are to be rendered by a Medicare certified hospice program. These covered services include: Nursing care; physical therapy; occupational therapy; speech-language pathology therapy; medical social services; home health aide services (now called hospice aide services); physician services; homemaker services; medical supplies (including drugs and biologicals); medical appliances; counseling services (including dietary counseling); short-term inpatient care in a hospital, nursing facility, or hospice inpatient facility (including both respite care and procedures necessary for pain control and acute or chronic symptom management); continuous home care during periods of crisis, and only as necessary to maintain the terminally ill individual at home; and any other item or service which is specified in the plan of care and for which payment may otherwise be made under Medicare, in accordance with Title XVIII of the Act.

Section 1814(a)(7)(B) of the Act requires that a written plan for providing hospice care to a beneficiary who is a hospice patient be established before care is provided by, or under arrangements made by, that hospice program and that the written plan be periodically reviewed by the beneficiary's attending physician (if any), the hospice medical director, and an interdisciplinary group (described in section 1861(dd)(2)(B) of the Act). The services offered under the Medicare hospice benefit must be available to beneficiaries as needed, 24 hours a day, 7 days a week (section 1861(dd)(2)(A)(i) of the Act). Upon the implementation of the hospice benefit, the Congress expected hospices to continue to use volunteer services, though these services are not reimbursed by Medicare (see Section 1861(dd)(2)(E) of the Act and 48 FR 38149). As stated in the August 22, 1983 Hospice proposed rule, the hospice interdisciplinary group should comprise paid hospice employees as well as hospice volunteers (48 FR 38149). This expectation supports the hospice philosophy of holistic, comprehensive, compassionate, end-of-life care.

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[1] Connor, Stephen. (2007). Development of Hospice and Palliative Care in the United States. OMEGA. 56(1), p. 89–99.

[2] Paolini, DO, Charlotte. (2001). Symptoms Management at End of Life. JAOA. 101(10). p. 609–615.

Before the Medicare hospice benefit was established, the Congress requested a demonstration project to test the feasibility of covering hospice care under Medicare. The National Hospice Study was initiated in 1980 through a grant sponsored by the Robert Wood Johnson and John A. Hartford Foundations and CMS (then, the Health Care Financing Administration (HCFA)). The demonstration project was conducted between October 1980 and March 1983. The project summarized the hospice care philosophy and principles as the following:

- Patient and family know of the terminal condition.
- Further medical treatment and intervention are indicated only on a supportive basis.
- Pain control should be available to patients as needed to prevent rather than to just ameliorate pain.
- Interdisciplinary teamwork is essential in caring for patient and family.
- Family members and friends should be active in providing support during the death and bereavement process.
- Trained volunteers should provide additional support as needed.

The cost data and the findings on what services hospices provided in the demonstration project were used to design the Medicare hospice benefit. The identified hospice services were incorporated into the service requirements under the Medicare hospice benefit. Importantly, in the August 22, 1983 Hospice proposed rule, we stated "the hospice benefit and the resulting Medicare reimbursement is not intended to diminish the voluntary spirit of hospices" (48 FR 38149).

D. Medicare Payment for Hospice Care

Sections 1812(d), 1813(a)(4), 1814(a)(7), 1814(i), and 1861(dd) of the Act, and our regulations in part 418, establish eligibility requirements, payment standards and procedures, define covered services, and delineate the conditions a hospice must meet to be approved for participation in the Medicare program. Part 418, subpart G, provides for a per diem payment in one of four prospectively-determined rate categories of hospice care (Routine Home Care (RHC), Continuous Home Care (CHC), inpatient respite care, and general inpatient care), based on each day a qualified Medicare beneficiary is under hospice care (once the individual has elected). This per diem payment is to include all of the hospice services needed to manage the beneficiary's care, as required by section 1861(dd)(1) of the Act. There has been little change in the hospice payment structure since the benefit's inception. The per diem rate based on level of care was established in 1983, and this payment structure remains today with some adjustments, as noted below:

1. Omnibus Budget Reconciliation Act of 1989

Section 6005(a) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) amended section 1814(i)(1)(C) of the Act and provided for the following two changes in the methodology concerning updating the daily payment rates: (1) Effective January 1, 1990, the daily payment rates for RHC and other services included in hospice care were increased to equal 120 percent of the rates in effect on September 30, 1989; and (2) the daily payment rate for RHC and other services included in hospice care for fiscal years (FYs) beginning on or after October 1, 1990, were the payment rates in effect during the previous Federal fiscal year increased by the hospital market basket percentage increase.

2. Balanced Budget Act of 1997

Section 4441(a) of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) amended section 1814(i)(1)(C)(ii)(VI) of the Act to establish updates to hospice rates for FYs 1998 through 2002. Hospice rates were updated by a factor equal to the hospital market basket percentage increase, minus 1 percentage point. Payment rates for FYs from 2002 have been updated according to section 1814(i)(1)(C)(ii)(VII) of the Act, which states that the update to the payment rates for subsequent FYs will be the hospital market basket percentage increase for the FY. The Act requires us to use the inpatient hospital market basket to determine hospice payment rates.

3. FY 1998 Hospice Wage Index Final Rule

In the August 8, 1997 FY 1998 Hospice Wage Index final rule (62 FR 42860), we implemented a new methodology for calculating the hospice wage index based on the recommendations of a negotiated rulemaking committee. The original hospice wage index was based on 1981 Bureau of Labor Statistics hospital data and had not been updated since 1983. In 1994, because of disparity in wages from one geographical location to another, the Hospice Wage Index Negotiated Rulemaking Committee was formed to negotiate a new wage index methodology that could be accepted by the industry and the government. This Committee was composed of representatives from national hospice associations; rural, urban, large and small hospices, and multi-site hospices; consumer groups; and a government representative. The Committee decided that in updating the hospice wage index, aggregate Medicare payments to hospices would remain budget neutral to payments calculated using the 1983 wage index, to cushion the impact of using a new wage index methodology. To implement this policy, a Budget Neutrality Adjustment Factor (BNAF) was computed and applied annually to the pre-floor, pre-reclassified hospital wage index when deriving the hospice wage index, subject to a wage index floor.

4. FY 2010 Hospice Wage Index Final Rule

Inpatient hospital pre-floor and pre-reclassified wage index values, as described in the August 8, 1997 Hospice Wage Index final rule, are subject to either a budget neutrality adjustment or application of the wage index floor. Wage index values of 0.8 or greater are adjusted by the BNAF. Starting in FY 2010, a 7-year phase-out of the BNAF began (FY 2010 Hospice Wage Index final rule, (74 FR 39384, August 6, 2009)), with a 10 percent reduction in FY 2010, an additional 15 percent reduction for a total of 25 percent in FY 2011, an additional 15 percent reduction for a total 40 percent reduction in FY 2012, an additional 15 percent reduction for a total of 55 percent in FY 2013, and an additional 15 percent reduction for a total 70 percent reduction in FY 2014. The phase-out continued with an additional 15 percent reduction for a total reduction of 85 percent in FY 2015, an additional, and final, 15 percent reduction for complete elimination in FY 2016. We note that the BNAF was an adjustment which increased the hospice wage index value. Therefore, the BNAF phase-out reduced the amount of the BNAF increase applied to the hospice wage index value. It was not a reduction in the hospice wage index value itself or in the hospice payment rates.

5. The Affordable Care Act

Starting with FY 2013 (and in subsequent FYs), the market basket percentage update under the hospice payment system referenced in sections 1814(i)(1)(C)(ii)(VII) and 1814(i)(1)(C)(iii) of the Act is subject to annual reductions related to changes in economy-wide productivity, as specified in section 1814(i)(1)(C)(iv) of the Act. In FY 2013 through FY 2019, the market basket percentage update under the hospice payment system will be reduced by an additional 0.3 percentage point (although for FY 2014 to FY 2019, the potential 0.3 percentage point reduction is subject to suspension under conditions specified in section 1814(i)(1)(C)(v) of the Act).

In addition, sections 1814(i)(5)(A) through (C) of the Act, as added by section 3132(a) of the Affordable Care Act, require hospices to begin submitting quality data, based on measures to be specified by the Secretary of the Department of Health and Human Services (the Secretary), for FY 2014 and subsequent FYs. Beginning in FY 2014, hospices which fail to report quality data will have their market basket update reduced by 2 percentage points.

Section 1814(a)(7)(D)(i) of the Act, as added by section 3132(b)(2) of the Affordable Care Act, requires, effective January 1, 2011, that a hospice physician or nurse practitioner have a face-to-face encounter with the beneficiary to determine continued eligibility of the beneficiary's hospice care prior to the 180th-day recertification and each subsequent recertification, and to attest that such visit took place. When implementing this provision, we finalized in the CY 2011 Home Health Prospective Payment System final rule (75 FR 70435) that the 180th-day recertification and subsequent recertifications would correspond to the beneficiary's third or subsequent benefit periods. Further, section 1814(i)(6) of the Act, as added by section 3132(a)(1)(B) of the Affordable Care Act, authorizes the Secretary to collect additional data and information determined appropriate to revise payments for hospice care and other purposes. The types of data and information suggested in the Affordable Care Act could capture accurate resource utilization, which could be collected on claims, cost reports, and possibly other mechanisms, as the Secretary determined to be appropriate. The data collected could be used to revise the methodology for determining the payment rates for RHC and other services included in hospice care, no earlier than October 1, 2013, as described in section 1814(i)(6)(D) of the Act. In addition, we were required to consult with hospice programs and the Medicare Payment Advisory Commission (MedPAC) regarding additional data collection and payment revision options.

6. FY 2012 Hospice Wage Index Final Rule

When the Medicare Hospice benefit was implemented, the Congress included an aggregate cap on hospice payments, which limits the total aggregate payments any individual hospice can receive in a year. The Congress stipulated that a "cap amount" be computed each year. The cap amount was set at $6,500 per beneficiary when first enacted in 1983 and has been adjusted annually by the change in the medical care expenditure category of the consumer price index for urban consumers from March 1984 to March of the cap year (section 1814(i)(2)(B) of the Act). The cap year was defined as the period from November 1st to October 31st. In the August 4, 2011 FY 2012 Hospice Wage Index final rule (76 FR 47308 through 47314) for the 2012 cap year and subsequent cap years, we announced that subsequently, the hospice aggregate cap would be calculated using the patient-by-patient proportional methodology, within certain limits. We allowed existing hospices the option of having their cap calculated via the original streamlined methodology, also within certain limits. As of FY 2012, new hospices have their cap determinations calculated using the patient-by-patient proportional methodology. The patient-by-patient proportional methodology and the streamlined methodology are two different methodologies for counting beneficiaries when calculating the hospice aggregate cap. A detailed explanation of these methods is found in the August 4, 2011 FY 2012 Hospice Wage Index final rule (76 FR 47308 through 47314). If a hospice's total Medicare reimbursement for the cap year exceeds the hospice aggregate cap, then the hospice must repay the excess back to Medicare.

7. FY 2015 Hospice Wage Index and Payment Rate Update Final Rule

When electing hospice, a beneficiary waives Medicare coverage for any care for the terminal illness and related conditions except for services provided by the designated hospice and attending physician. The FY 2015 Hospice Wage Index and Payment Rate Update final rule (79 FR 50452) finalized a requirement that requires the Notice of Election (NOE) be filed within 5 calendar days after the effective date of hospice election. If the NOE is filed beyond this 5 day period, hospice providers are liable for the services furnished during the days from the effective date of hospice election to the date of NOE filing (79 FR 50474). Similar to the NOE, the claims processing system must be notified of a beneficiary's discharge from hospice or hospice benefit revocation. This update to the beneficiary's status allows claims from non-hospice providers to be processed and paid. Late filing of the NOE can result in inaccurate benefit period data and leaves Medicare vulnerable to paying non-hospice claims related to the terminal illness and related conditions and beneficiaries possibly liable for any cost-sharing associated costs. Upon live discharge or revocation, the beneficiary immediately resumes the Medicare coverage that had been waived when he or she elected hospice. The FY 2015 Hospice Wage Index and Payment Rate Update final rule also finalized a requirement that requires hospices to file a notice of termination/revocation within 5 calendar days of a beneficiary's live discharge or revocation, unless the hospices have already filed a final claim. This requirement helps to protect beneficiaries from delays in accessing needed care (§ 418.26(e)).

A hospice "attending physician" is described by the statutory and regulatory definitions as a medical doctor, osteopath, or nurse practitioner whom the beneficiary identifies, at the time of hospice election, as having the most significant role in the determination and delivery of his or her medical care. We received reports of problems with the identification of the person's designated attending physician and a third of hospice patients had multiple providers submit Part B claims as the "attending physician," using a claim modifier. The FY 2015 Hospice Wage Index and Payment Rate Update final rule finalized a requirement that the election form include the beneficiary's choice of attending physician and that the beneficiary provide the hospice with a signed document when he or she chooses to change attending physicians (79 FR 50479).

Hospice providers are required to begin using a Hospice Experience of

Care Survey for informal caregivers of hospice patients surveyed in 2015. The FY 2015 Hospice Wage Index and Payment Rate Update final rule provided background and a description of the development of the Hospice Experience of Care Survey, including the model of survey implementation, the survey respondents, eligibility criteria for the sample, and the languages in which the survey is offered. The FY 2015 Hospice Rate Update final rule also set out participation requirements for CY 2015 and discussed vendor oversight activities and the reconsideration and appeals process for entities that failed to win CMS approval as vendors (79 FR 50496).

Finally, the FY 2015 Hospice Wage Index and Payment Rate Update final rule required providers to complete their aggregate cap determination not sooner than 3 months after the end of the cap year, and not later than 5 months after, and remit any overpayments. Those hospices that fail to timely submit their aggregate cap determinations will have their payments suspended until the determination is completed and received by the Medicare Administrative Contractor (MAC) (79 FR 50503).

8. IMPACT Act of 2014

The Improving Medicare Post-Acute Care Transformation Act of 2014 (Pub. L. 113–185) (IMPACT Act) became law on October 6, 2014. Section 3(a) of the IMPACT Act mandated that all Medicare certified hospices be surveyed every 3 years beginning April 6, 2015 and ending September 30, 2025. In addition, section 3(c) of the IMPACT Act requires medical review of hospice cases involving beneficiaries receiving more than 180 days care in select hospices that show a preponderance of such patients; section 3(d) of the IMPACT Act contains a new provision mandating that the cap amount for accounting years that end after September 30, 2016, and before October 1, 2025 be updated by the hospice payment update rather than using the consumer price index for urban consumers (CPI–U) for medical care expenditures.

9. FY 2016 Hospice Wage Index and Payment Rate Update Final Rule

In the FY 2016 Hospice Rate Update final rule, we created two different payment rates for RHC that resulted in a higher base payment rate for the first 60 days of hospice care and a reduced base payment rate for all subsequent days of hospice care (80 FR 47172). We also created a Service Intensity Add-on (SIA) payment payable for services during the last 7 days of the beneficiary's life, equal to the CHC hourly payment rate multiplied by the amount of direct patient care provided by a registered nurse (RN) or social worker that occurs during the last 7 days (80 FR 47177).

In addition to the hospice payment reform changes discussed, the FY 2016 Hospice Wage Index and Payment Rate Update final rule implemented changes mandated by the IMPACT Act, in which the cap amount for accounting years that end after September 30, 2016 and before October 1, 2025 is updated by the hospice payment update percentage rather than using the CPI–U. This was applied to the 2016 cap year, starting on November 1, 2015 and ending on October 31, 2016. In addition, we finalized a provision to align the cap accounting year for both the inpatient cap and the hospice aggregate cap with the fiscal year for FY 2017 and later (80 FR 47186). This allows for the timely implementation of the IMPACT Act changes while better aligning the cap accounting year with the timeframe described in the IMPACT Act.

Finally, the FY 2016 Hospice Wage Index and Payment Rate Update final rule clarified that hospices must report all diagnoses of the beneficiary on the hospice claim as a part of the ongoing data collection efforts for possible future hospice payment refinements. Reporting of all diagnoses on the hospice claim aligns with current coding guidelines as well as admission requirements for hospice certifications.

E. Trends in Medicare Hospice Utilization

Since the implementation of the hospice benefit in 1983, and especially within the last decade, there has been substantial growth in hospice benefit utilization. The number of Medicare beneficiaries receiving hospice services has grown from 513,000 in FY 2000 to nearly 1.4 million in FY 2015. Similarly, Medicare hospice expenditures have risen from $2.8 billion in FY 2000 to an estimated $15.5 billion in FY 2015. Our Office of the Actuary (OACT) projects that hospice expenditures are expected to continue to increase, by approximately 7 percent annually, reflecting an increase in the number of Medicare beneficiaries, more beneficiary awareness of the Medicare Hospice Benefit for end-of-life care, and a growing preference for care provided in home and community-based settings.

There have also been changes in the diagnosis patterns among Medicare hospice enrollees. Specifically, as described in Table 2, there have been notable increases between 2002 and 2015 in neurologically-based diagnoses, including various dementia and Alzheimer's diagnoses. Additionally, there had been significant increases in the use of non-specific, symptom-classified diagnoses, such as "debility" and "adult failure to thrive." In FY 2013, "debility" and "adult failure to thrive" were the first and sixth most common hospice diagnoses, respectively, accounting for approximately 14 percent of all diagnoses. Effective October 1, 2014, hospice claims are returned to the provider if "debility" and "adult failure to thrive" are coded as the principal hospice diagnosis as well as other ICD–9–CM (and as of October 1, 2015, ICD–10–CM) codes that are not permissible as principal diagnosis codes per ICD–9–CM (or ICD–10–CM) coding guidelines. In the FY 2015 Hospice Wage Index and Payment Rate Update final rule (79 FR 50452), we reminded the hospice industry that this policy would go into effect and claims would start to be returned to the provider effective October 1, 2014. As a result of this, there has been a shift in coding patterns on hospice claims. For FY 2015, the most common hospice principal diagnoses were Alzheimer's disease, Congestive Heart Failure, Lung Cancer, Chronic Airway Obstruction and Senile Dementia which constituted approximately 35 percent of all claims-reported principal diagnosis codes reported in FY 2015 (see Table 2).

TABLE 2—THE TOP TWENTY PRINCIPAL HOSPICE DIAGNOSES, FY 2002, FY 2007, FY 2013, FY 2015

Rank	ICD–9/reported principal diagnosis	Count	Percentage
	Year: FY 2002		
1	162.9 Lung Cancer	73,769	11
2	428.0 Congestive Heart Failure	45,951	7
3	799.3 Debility Unspecified	36,999	6

TABLE 2—THE TOP TWENTY PRINCIPAL HOSPICE DIAGNOSES, FY 2002, FY 2007, FY 2013, FY 2015—Continued

Rank	ICD–9/reported principal diagnosis	Count	Percentage
4	496 COPD	35,197	5
5	331.0 Alzheimer's Disease	28,787	4
6	436 CVA/Stroke	26,897	4
7	185 Prostate Cancer	20,262	3
8	783.7 Adult Failure To Thrive	18,304	3
9	174.9 Breast Cancer	17,812	3
10	290.0 Senile Dementia, Uncomp	16,999	3
11	153.0 Colon Cancer	16,379	2
12	157.9 Pancreatic Cancer	15,427	2
13	294.8 Organic Brain Synd Nec	10,394	2
14	429.9 Heart Disease Unspecified	10,332	2
15	154.0 Rectosigmoid Colon Cancer	8,956	1
16	332.0 Parkinson's Disease	8,865	1
17	586 Renal Failure Unspecified	8,764	1
18	585 Chronic Renal Failure (End 2005)	8,599	1
19	183.0 Ovarian Cancer	7,432	1
20	188.9 Bladder Cancer	6,916	1
	Year: FY 2007		
1	799.3 Debility Unspecified	90,150	9
2	162.9 Lung Cancer	86,954	8
3	428.0 Congestive Heart Failure	77,836	7
4	496 COPD	60,815	6
5	783.7 Adult Failure To Thrive	58,303	6
6	331.0 Alzheimer's Disease	58,200	6
7	290.0 Senile Dementia Uncomp.	37,667	4
8	436 CVA/Stroke	31,800	3
9	429.9 Heart Disease Unspecified	22,170	2
10	185 Prostate Cancer	22,086	2
11	174.9 Breast Cancer	20,378	2
12	157.9 Pancreas Unspecified	19,082	2
13	153.9 Colon Cancer	19,080	2
14	294.8 Organic Brain Syndrome NEC	17,697	2
15	332.0 Parkinson's Disease	16,524	2
16	294.10 Dementia In Other Diseases w/o Behav. Dist	15,777	2
17	586 Renal Failure Unspecified	12,188	1
18	585.6 End Stage Renal Disease	11,196	1
19	188.9 Bladder Cancer	8,806	1
20	183.0 Ovarian Cancer	8,434	1
	Year: FY 2013		
1	799.3 Debility Unspecified	127,415	9
2	428.0 Congestive Heart Failure	96,171	7
3	162.9 Lung Cancer	91,598	6
4	496 COPD	82,184	6
5	331.0 Alzheimer's Disease	79,626	6
6	783.7 Adult Failure to Thrive	71,122	5
7	290.0 Senile Dementia, Uncomp	60,579	4
8	429.9 Heart Disease Unspecified	36,914	3
9	436 CVA/Stroke	34,459	2
10	294.10 Dementia In Other Diseases w/o Behavioral Dist.	30,963	2
11	332.0 Parkinson's Disease	25,396	2
12	153.9 Colon Cancer	23,228	2
13	294.20 Dementia Unspecified w/o Behavioral Dist.	23,224	2
14	174.9 Breast Cancer	23,059	2
15	157.9 Pancreatic Cancer	22,341	2
16	185 Prostate Cancer	21,769	2
17	585.6 End-Stage Renal Disease	19,309	1
18	518.81 Acute Respiratory Failure	15,965	1
19	294.8 Other Persistent Mental Dis.-classified elsewhere	14,372	1
20	294.11 Dementia In Other Diseases w/Behavioral Dist.	13,687	1
	Year: FY 2015		
1	331.0 Alzheimer's disease	195,469	13
2	428.0 Congestive heart failure, unspecified	114,240	8
3	162.9 Lung Cancer	87,661	6
4	496 COPD	80,081	5
5	331.2 Senile degeneration of brain	46,610	3
6	332.0 Parkinson's Disease	34,734	2

TABLE 2—THE TOP TWENTY PRINCIPAL HOSPICE DIAGNOSES, FY 2002, FY 2007, FY 2013, FY 2015—Continued

Rank	ICD–9/reported principal diagnosis	Count	Percentage
7	429.9 Heart disease, unspecified	31,695	2
8	436 CVA/Stroke	28,985	2
9	437.0 Cerebral atherosclerosis	26,765	2
10	174.9 Breast Cancer	23,742	2
11	153.9 Colon Cancer	23,677	2
12	185 Prostate Cancer	23,061	2
13	157.9 Pancreatic Cancer	22,906	2
14	585.6 End stage renal disease	22,763	2
15	491.21 Obstructive chronic bronchitis with (acute) exacerbation	21,283	1
16	518.81 Acute respiratory failure	19,965	1
17	429.2 Cardiovascular disease, unspecified	16,843	1
18	434.91 Cerebral artery occlusion, unspecified with cerebral infarction	15,642	1
19	414.00 Coronary atherosclerosis of unspecified type of vessel	15,566	1
20	188.9 Bladder Cancer	11,517	1

Note(s): The frequencies shown represent beneficiaries that had a least one claim with the specific ICD–9–CM code reported as the principal diagnosis. Beneficiaries could be represented multiple times in the results if they have multiple claims during that time period with different principal diagnoses.

Source: FY 2002 and 2007 hospice claims data from the Chronic Conditions Data Warehouse (CCW), accessed on February 14 and February 20, 2013. FY 2013 hospice claims data from the CCW, accessed on June 26, 2014, and preliminary FY 2015 hospice claims data from the CCW, accessed on January 25, 2016.

While there has been a shift in the reporting of the principal diagnosis as a result of diagnosis clarifications, a significant proportion of hospice claims (49 percent) in FY 2014 only reported a single principal diagnosis, which may not fully explain the characteristics of Medicare beneficiaries who are approaching the end of life. To address this pattern of single diagnosis reporting, the FY 2015 Hospice Wage Index and Payment Rate Update final rule (79 FR 50498) reiterated ICD–9–CM coding guidelines for the reporting of the principal and additional diagnoses on the hospice claim. We reminded providers to report all diagnoses on the hospice claim for the terminal illness and related conditions, including those that affect the care and clinical management for the beneficiary. Additionally, in the FY 2016 Hospice Wage Index and Payment Rate Update final rule (80 FR 47201), we provided further clarification regarding diagnosis reporting on hospice claims. We clarified that hospices will report *all* diagnoses identified in the initial and comprehensive assessments on hospice claims, whether related or unrelated to the terminal prognosis of the individual, effective October 1, 2015. Preliminary analysis of FY 2015 hospice claims show that only 37 percent of hospice claims include a single, principal diagnosis, with 63 percent submitting at least two diagnoses and 46 percent including at least three.[3]

F. Use of Health Information Technology

HHS believes that the use of certified health IT by hospices can help providers improve internal care delivery practices and advance the interoperable exchange of health information across care partners to improve communication and care coordination. The Department of Health and Human Services (HHS) has a number of initiatives designed to encourage and support the adoption of health information technology and promote nationwide health information exchange to improve health care. The Office of the National Coordinator for Health Information Technology (ONC) leads these efforts in collaboration with other agencies, including CMS and the Office of the Assistant Secretary for Planning and Evaluation (ASPE). In 2015, ONC released a document entitled "Connecting Health and Care for the Nation: A Shared Nationwide Interoperability Roadmap" (available at: *https://www.healthit.gov/sites/default/files/hie-interoperability/nationwide-interoperability-roadmap-final-version-1.0.pdf*) which includes a near-term focus on actions that will enable a majority of individuals and providers across the care continuum to send, receive, find and use a common set of electronic clinical information at the nationwide level by the end of 2017. The 2015 Edition Health IT Certification Criteria (2015 Edition) builds on past rulemakings to facilitate greater interoperability for several clinical health information purposes and enables health information exchange through new and enhanced certification criteria, standards, and implementation specifications. The 2015 Edition also focuses on the establishment of an interoperable nationwide health information infrastructure. More information on the ONC Health IT Certification Program is available at: *https://www.healthit.gov/policy-researchers-implementers/2015-edition-final-rule*

III. Provisions of the Proposed Rule

A. Monitoring for Potential Impacts—Affordable Care Act Hospice Reform

1. Hospice Payment Reform: Research and Analyses

a. Pre-Hospice Spending

In 1982, the Congress introduced hospice into the Medicare program as an alternative to aggressive curative treatment at the end of life. During the development of the benefit, multiple testimonies from industry leaders and hospice families were heard, and it was consistently reported that hospices provided high-quality, compassionate and humane care while also offering a reduction in Medicare costs.[4] Additionally, a Congressional Budget Office (CBO) study asserted that hospice care would result in sizable savings over conventional hospital care.[5] Those savings estimates were based on a comparison of spending in the last 6 months of life for a cancer patient not utilizing hospice care versus the cost of hospice care for the 6 months preceding death.[6] Therefore, the original language for section 1814(i) of the Act (prior to August 29, 1983) set the hospice aggregate cap amount at 40 percent of the average Medicare per capita expenditure amount for cancer patients in the last 6 months of life. Recent analysis conducted by MedPAC showed that hospice appears to modestly raise end-of-life costs.[7] While hospice reduces costs for cancer decedents on average, hospice does not reduce costs for individuals with long hospice stays.

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[3] FFY15 Hospice Claims from CCW; Pulled Jan 06 2016

[4] Subcommittee of Health of the Committee of Ways and Means, House of Representatives, March 25, 1982.

[5] Mor V. Masterson-Allen S. (1987): *Hospice care systems: Structure, process, costs and outcome.* New York: Springer Publishing Company.

Analysis was conducted to evaluate pre-hospice spending for beneficiaries who used hospice and who died in FY 2014. To evaluate pre-hospice spending, we calculated the median daily Medicare payments for such beneficiaries for the 180 days, 90 days, and 30 days prior to electing hospice care. We then categorized patients according to the principal diagnosis reported on the hospice claim. The analysis revealed that for some patients, the Medicare payments in the 180 days prior to the hospice election were lower than Medicare payments associated with hospice care once the benefit was elected (see Table 3). Specifically, median Medicare spending for a beneficiary with a diagnosis of Alzheimer's disease, non-Alzheimer's dementia, or Parkinson's in the 180 days prior to hospice admission (about 20 percent of patients) was $64.87 per day compared to the daily RHC rate of $156.06 in FY 2014. Closer to hospice admission, the median Medicare payments per day increase, as would be expected as the patient approaches the end of life and patient needs intensify. However, 30 days prior to a hospice election, median Medicare spending was $96.99 for patients with Alzheimer's disease, non-Alzheimer's dementia, or Parkinson's. In contrast, the median Medicare payments prior to hospice election for patients with a principal hospice diagnosis of cancer were $143.48 in the 180 days prior to hospice admission and increased to $293.64 in the 30 days prior to hospice admission. The average length of stay for hospice elections where the principal diagnosis was reported as Alzheimer's disease, non-Alzheimer's Dementia, or Parkinson's is greater than patients with other diagnoses, such as cancer, Cerebral Vascular Accident (CVA)/stroke, chronic kidney disease, and Chronic Obstructive Pulmonary Disease (COPD). For example, the average lifetime length of stay for an Alzheimer's, non-Alzheimer's Dementia, or Parkinson's patient in FY 2014 was 119 days, compared to 47 days for patients with a principal diagnosis of cancer (or in other words, 150 percent longer).

TABLE 3—MEDIAN PRE-HOSPICE SPENDING ESTIMATES AND INTERQUARTILE RANGE BASED ON 180, 90, AND 30 DAY LOOK-BACK PERIODS PRIOR TO INITIAL HOSPICE ADMISSION WITH ESTIMATES OF AVERAGE LIFETIME LENGTH OF STAY (LOS) BY PRIMARY DIAGNOSIS AT HOSPICE ADMISSION, FY 2014

Primary Hospice Diagnosis at Admission	Estimates of Daily Non-Hospice Medicare Spending Prior to First Hospice Admission									Mean Lifetime Total Hospice Days
	180 Day Look-Back			90 Day Look-Back			30 Day Look-Back			
	25th Pct.	Median	75th Pct.	25th Pct.	Median	75th Pct.	25th Pct.	Median	75th Pct.	
All Diagnoses	$46.92	$117.77	$241.97	$55.70	$157.92	$340.24	$58.07	$268.98	$548.00	73.9
Alzheimer's, Dementia, and Parkinson's	22.56	64.87	160.29	22.16	78.62	216.75	20.18	96.99	357.49	118.8
CVA/Stroke	51.05	111.22	233.33	70.13	158.29	338.67	102.64	320.20	588.60	55.6
Cancers	62.37	143.48	268.44	77.91	188.66	364.64	80.81	293.64	576.16	47.3
Chronic Kidney Disease	87.81	203.97	389.33	117.38	273.72	524.18	174.13	435.90	796.26	29.8
Heart (CHF and Other Heart Disease)	57.03	130.15	251.14	72.85	177.45	357.43	84.57	308.69	572.53	78.8
Lung (COPD and Pneumonias)	63.10	140.46	268.43	87.05	196.62	396.02	114.58	360.29	676.46	69.4
All Other Diagnoses	44.75	115.05	245.91	54.25	158.65	357.24	59.98	285.65	590.73	78.2

Source: All Medicare Parts A, B, and D claims for FY 2014 from the Chronic Conditions Data Warehouse (CCW) retrieved February, 2016.
Note(s): Estimates drawn from FY2014 hospice decedents who were first-time hospice admissions, ages 66+ at hospice admission, admitted since 2006, and not enrolled in Medicare Advantage prior to admission. All payments are inflation-adjusted to September 2014 dollars using the Consumer Price Index (Medical Care; All Urban Consumers).

In the FY 2014 Hospice Wage Index and Payment Rate Update proposed and final rules (78 FR 27843 and 78 FR 48272, respectively), we discussed whether a case mix system could be created in future refinements to differentiate hospice payments according to patient characteristics. Analyzing pre-hospice spending was undertaken as an initial step in determining whether patients required different resource needs prior to hospice based on the principal diagnosis reported on the hospice claim. Table 3 indicates that hospice patients with the longest length of stay had lower pre-hospice spending relative to hospice patients with shorter lengths of stay. These hospice patients tend to be those with neurological conditions, including those with Alzheimer's disease, other related dementias, and Parkinson's disease. Typically, these conditions are associated with longer disease trajectories, progressive loss of functional and cognitive abilities, and more difficult prognostication.

b. Non-hospice Spending

When a beneficiary elects the Medicare hospice benefit, he or she waives the right to Medicare payment for services related to the treatment of the individual's condition with respect to which a diagnosis of terminal illness has been made, except for services provided by the designated hospice and the attending physician. Hospice services are to be comprehensive and inclusive and we have reiterated since 1983 that "virtually all" care needed by the terminally ill individual would be provided by hospice, given the interrelatedness of body systems. We believe that it would be unusual and exceptional to see services provided outside of hospice for those individuals who are approaching the end of life. However, we have conducted ongoing analysis of non-hospice spending during a hospice election over the past several years and this analysis seems to suggest unbundling of services that perhaps should have been provided and covered under the Medicare hospice benefit.

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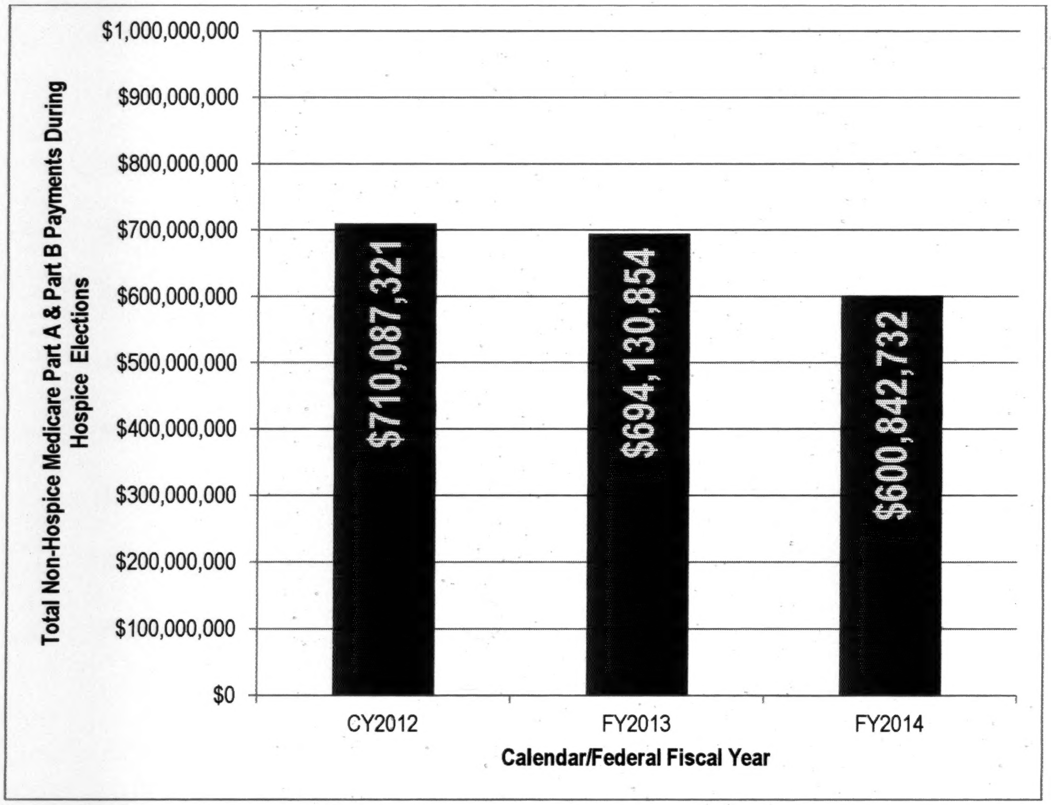
[6] Fogel, Richard. (1983): *Comments on the Legislative Intent of Medicare's Hospice Benefit (GAO/HRD–83–72).*

[7] Hogan, C. (2015): *Spending in the Last Year of Life and the Impact of Hospice on Medicare Outlays. http://www.medpac.gov/documents/contractor-reports/spending-in-the-last-year-of-life-and-the-impact-of-hospice-on-medicare-outlays-(updated-august-2015).pdf?sfvrsn=0*

We reported initial findings on CY 2012 non-hospice spending during a hospice election in the FY 2015 Hospice Wage Index and Payment Rate Update final rule (79 FR 50452) and FY 2013 non-hospice spending during a hospice election in the FY 2016 Hospice Wage Index and Payment Rate Update final rule (80 FR 47153). In this rule, we updated our analysis of non-hospice spending during a hospice election using FY 2014 data. Medicare payments for non-hospice Part A and Part B services received by hospice beneficiaries during hospice election were $710.1 million in CY 2012, $694.1 million in FY 2013, and $600.8 million in FY 2014 (See Figure 1). Non-hospice spending has decreased each year since we began reporting these findings: down 2.2 percent from CY 2012 to FY 2013 and then down 13.4 percent in from FY 2013 to FY 2014—a much more significant decline. Overall, from CY 2012 to FY 2014 non-hospice spending during hospice election declined 15.4 percent.

Figure 1: Medicare Payments for Non-Hospice Medicare Part A and Part B Services During Hospice Elections, CY 2012, FY 2013, and FY 2014

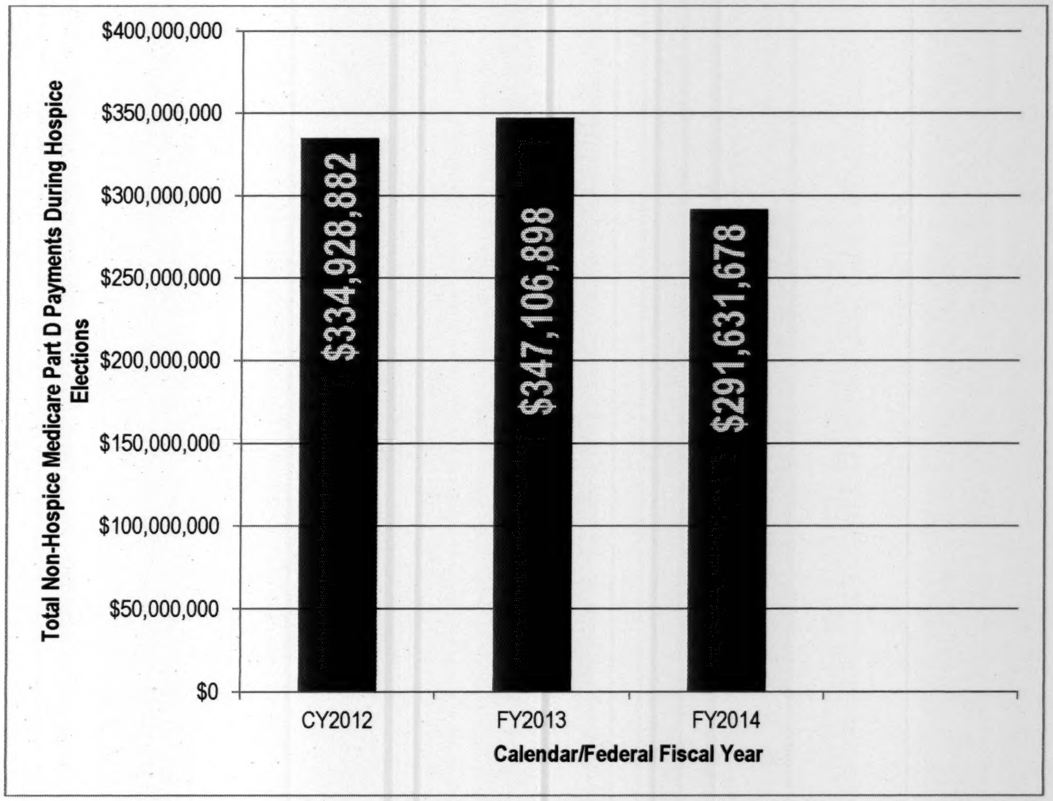


Note(s): Analysis of 100 percent Medicare Part A and Part B Standard Analytic Files, CY 2012 through FY 2014, excluding utilization on hospice admission or live discharge days.

Hospice beneficiaries had $122.5 million in Parts A and B cost-sharing for items and services that were billed to Medicare Parts A and B for a total of $723.3 million for FY 2014.

We also examined Part D for CY 2012 and FY 2013 spending for those beneficiaries under a hospice election and reported those findings in our FY 2015 and FY 2016 hospice final rules, respectively. We updated our analysis of FY 2014 Part D Prescription Drug Event data, which shows Medicare payments for non-hospice Part D drugs received by hospice beneficiaries during a hospice election were $334.9 million in CY 2012, $347.1 million in FY 2013, and $291.6 million in FY 2014 (see Figure 2).

Figure 2: Medicare Payments for Non-Hospice Medicare Part D Services During Hospice Elections, CY 2012, FY 2013, and FY 2014



Source: Analysis of 100% CY 2012 through FY 2014 Medicare Claim Files. +

Table 4 details the various components of Part D spending for patients receiving hospice care. The portion of the $371.7 million total Part D spending that was paid by Medicare is the sum of the Low Income Cost-Sharing Subsidy and the Covered Drug Plan Paid Amount, or $291.6 million.

TABLE 4—DRUG COST SOURCES FOR HOSPICE BENEFICIARIES' FY 2014 DRUGS RECEIVED THROUGH PART D

Component	FY 2014 expenditures
Patient Pay Amount	$41,722,567
Low Income Cost-Sharing Subsidy	95,389,484
Other True Out-of Pocket Amount	1,704,601
Patient Liability Reduction due to Other Payer Amount	12,816,746
Covered Drug Plan Paid Amount	196,242,194
Non-Covered Plan Paid Amount	18,428,208
Six Payment Amount Totals	366,303,799
Unknown/Unreconciled	5,374,873
Gross Total Drug Costs, Reported	371,678,672

Source: Analysis of 100% FY 2014 Medicare Claim Files. For more information on the components above and on Part D data, go to the Research Data Assistance Center's (ResDAC's) Web site at: *http://www.resdac.org/.*

We further analyzed Part D drug expenditures by the top twenty most frequently reported principal diagnoses on hospice claims for beneficiaries under a hospice election. These Part D expenditures included those for common palliative drugs, which include analgesics (anti-inflammatory, non-narcotic, and opioids), antianxiety agents, antiemetics, and laxatives. The analysis also includes other drugs typically associated with the conditions reported. Table 5 details Part D spending for hospice beneficiaries by the top twenty most frequently reported principal diagnoses on hospice claims. Overlapping hospice claims are defined as claims for any Part D drugs that were dispensed on a day that the beneficiary also received hospice care.

TABLE 5—SUMMARY OF OVERLAPPING PART D DRUGS BY TOP 20 MOST FREQUENTLY REPORTED HOSPICE PRINCIPAL DIAGNOSES IN FY 2014

Terminal condition		Drug therapeutic classification	Number of hospice beneficiaries	Hospice beneficiaries (%)	Number of overlapping hospice claims	Number of Part D Rx	Part D gross drug payment ($)
3D–DGN	Description						
331	*Cerebral Degenerations.*		167,677	12.6			
		Common Palliative Drugs			50,537	61,310	1,880,621
		Psychotherapeutic and Neurological Agents—Misc.			48,764	72,774	11,563,443
		Antipsychotics/Antimanic Agents			35,307	46,857	3,229,221
428	*Heart Failure*		132,174	9.9			
		Common Palliative Drugs			38,110	46,448	1,589,113
		Cardiovascular Agents—Misc			509	602	1,243,362
		Antihypertensives			24,889	29,843	783,221
		Antianginal Agents			11,118	13,085	688,201
		Diuretics			38,081	50,186	485,243
		Beta Blockers			29,545	32,833	480,877
		Vasopressors			775	857	71,657
162	*Lung Cancer*		100,984	7.6			
		Common Palliative Drugs			20,689	25,723	1,182,222
		Antineoplastics and Adjunctive Therapies.			2,042	2,217	2,093,837
294	*Mental Disorder (Chronic).*		81,364	6.1			
		Common Palliative Drugs			26,355	32,457	971,792
		Psychotherapeutic and Neurological Agents—Misc.			21,181	31,800	4,868,784
		Antipsychotics/Antimanic Agents			18,076	24,244	1,826,575
496	*COPD*		79,267	6.0			
		Common Palliative Drugs			33,098	42,194	1,941,201
		Antiasthmatic and Bronchodilator Agents.			30,968	47,903	8,768,675
		Respiratory Agents—Misc			41	47	289,214
		Corticosteroids			11,600	13,516	195,780
290	*Mental Disorder (Senile & Presenile).*		70,852	5.3			
		Common Palliative Drugs			24,206	29,992	877,181
		Psychotherapeutic and Neurological Agents—Misc.			19,923	29,954	4,527,689
		Antipsychotics/Antimanic Agents			16,323	21,700	1,555,710
429	*Other Heart Diseases*		51,616	3.9			
		Common Palliative Drugs			16,072	19,902	735,511
		Antihyperlipidemics			14,071	16,122	657,115
		Antihypertensives			11,363	13,585	394,125
		Cardiovascular Agents—Misc			152	167	379,608
		Antianginal Agents			4,821	5,778	378,205
		Beta Blockers			11,955	13,190	203,521
		Diuretics			12,378	15,606	152,209
		Calcium Channel Blockers			5,880	6,462	115,265
		Vasopressors			374	420	29,475
436	*Stroke(Acute)*		33,766	2.5			
		Common Palliative Drugs			7,349	8,871	270,278
		Antihypertensives			7,397	9,257	245,294
		Antihyperlipidemics			6,776	8,019	239,749
		Anticoagulants			1,948	3,318	236,426
		Hematological Agents—Misc			3,602	4,006	216,792
		Beta Blockers			7,044	7,988	103,034
		Calcium Channel Blockers			4,698	5,467	72,363
		Cardiotonics			1,198	1,336	36,175
		Diuretics			4,149	5,119	34,962
		Cardiovascular Agents—Misc			22	24	24,149
		Vasopressors			90	94	7,624
332	*Parkinson's disease*		30,906	2.3			
		Common Palliative Drugs			10,305	12,639	388,887
		Antiparkinson Agents			15,969	22,317	2,470,058
		Psychotherapeutic and Neurological Agents—Misc.			10,059	14,280	2,331,283
		Antipsychotics/Antimanic Agents			6,581	8,859	809,845
585	*Chronic Renal Failure.*		27,945	2.1			
		Common Palliative Drugs			4,888	6,026	191,297
		Hematological Agents—Misc			1,204	1,350	57,443
		Diuretics			3,292	4,266	44,415
		Nutrients			92	138	21,096
		Minerals & Electrolytes			775	921	17,458
		Vitamins			22	22	123
438	*Stroke(Late Effect)*		27,443	2.1			
		Common Palliative Drugs			7,178	8,974	275,151
		Antihypertensives			6,813	8,557	233,267
		Anticoagulants			1,827	3,281	200,116
		Antihyperlipidemics			5,310	6,159	195,822

TABLE 5—SUMMARY OF OVERLAPPING PART D DRUGS BY TOP 20 MOST FREQUENTLY REPORTED HOSPICE PRINCIPAL DIAGNOSES IN FY 2014—Continued

Terminal condition		Drug therapeutic classification	Number of hospice beneficiaries	Hospice beneficiaries (%)	Number of overlapping hospice claims	Number of Part D Rx	Part D gross drug payment ($)
3D–DGN	Description						
		Hematological Agents—Misc			2,989	3,311	184,818
		Beta Blockers			7,192	8,170	109,777
		Calcium Channel Blockers			4,635	5,427	75,992
		Diuretics			3,826	4,991	36,531
		Cardiovascular Agents—Misc			22	29	23,212
157	*Pancreatic Cancer*		26,858	2.0			
		Common Palliative Drugs			4,809	5,854	302,932
		Digestive Aids			554	610	269,356
		Antineoplastics and Adjunctive Therapies.			367	403	146,428
518	*Lung Diseases*		26,683	2.0			
		Common Palliative Drugs			3,045	3,719	129,314
		Antiasthmatic and Bronchodilator Agents.			1,704	2,515	396,030
		Corticosteroids			754	854	11,081
414	*Ischemic Heart Disease.*		26,673	2.0			
		Common Palliative Drugs			8,831	10,882	425,098
		Antihyperlipidemics			7,927	8,987	367,409
		Antianginal Agents			3,741	4,577	276,861
		Antihypertensives			6,448	7,674	222,786
		Beta Blockers			6,817	7,506	117,183
		Cardiovascular Agents—Misc			32	37	61,455
		Calcium Channel Blockers			3,163	3,492	54,946
		Cardiotonics			1,164	1,272	33,187
153	*Colon Cancer*		26,668	2.0			
		Common Palliative Drugs			5,906	7,458	322,177
		Antineoplastics and Adjunctive Therapies.			523	574	387,221
174	*Breast Cancer*		25,174	1.9			
		Common Palliative Drugs			7,080	9,151	384,738
		Antineoplastics and Adjunctive Therapies.			2,529	2,855	680,720
185	*Prostate Cancer*		22,334	1.7			
		Common Palliative Drugs			4,446	5,655	293,249
		Antineoplastics and Adjunctive Therapies.			1,500	1,668	2,363,693
491	*Chronic bronchitis*		18,846	1.4			
		Common Palliative Drugs			6,469	8,157	364,686
437	*Other Cerebrovascular Disease.*		17,859	1.3			
		Common Palliative Drugs			3,991	4,907	164,769
155	*Liver Cancer*		15,242	1.1			
		Common Palliative Drugs			3,317	4,174	166,550
		Antineoplastics and Adjunctive Therapies.			300	326	1,106,663

Source: CWF Claims Data, Prescription Drug TAP, Medicare Enrollment Database. Claims data through 12/18/2015. Included all beneficiaries with a paid hospice claim (excluding hospice claims for pre-election counselling and evaluation services) for which Part D drugs were filled on a day that the beneficiary also received hospice care.

Hospices are required to cover drugs for the palliation and management of the terminal prognosis; we remain concerned that common palliative and other disease-specific drugs for hospice beneficiaries are being covered and paid for through Part D. Because hospices are required to provide a comprehensive range of services, including drugs, to Medicare beneficiaries under a hospice election, we believe that Medicare could be paying twice for drugs that are already covered under the hospice per diem payment by also paying for them under Part D.[8]

Total non-hospice spending paid by either Medicare or by beneficiaries that occurred during a hospice election was $723.3 million ($600.8 million Medicare spending plus $122.5 million in beneficiary cost-sharing liabilities) for Parts A and B plus $371.6 million ($291.6 million Medicare spending plus $80 million in beneficiary cost-sharing liabilities) for Part D spending, or approximately $1.1 billion dollars total in FY 2014.

c. Live Discharge Rates

Currently, federal regulations allow a beneficiary who has elected to receive Medicare hospice services to revoke their hospice election at any time and for any reason. Specifically, the regulations state that if the hospice beneficiary (or his/her representative) revokes the hospice election, Medicare coverage of hospice care for the remainder of that period is forfeited. The beneficiary may, at any time, re-elect to receive hospice coverage for any other hospice election period that he or she is eligible to receive (§ 418.24(e) and § 418.28(c)(3)). During the time period between revocation/discharge and the re-election of the hospice benefit, Medicare coverage would resume for those Medicare benefits previously waived. A revocation can only be made by the beneficiary, in writing, that he or she is revoking the hospice election and the effective date of the revocation. A hospice cannot "revoke" a beneficiary's hospice election, nor is it appropriate for hospices to encourage, request or demand that the beneficiary revoke his or her hospice election. Like the hospice election, a hospice revocation is to be an informed choice based on the beneficiary's goals, values and preferences for the services they wish to receive through Medicare.

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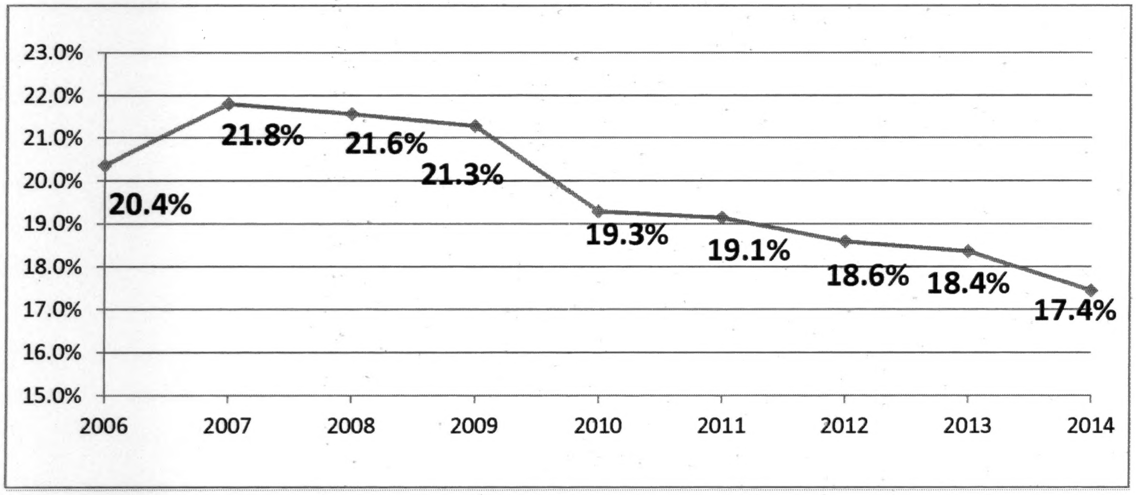
[8] *oig.hhs.gov/oas/region6/61000059.pdf* "Medicare Could Be Paying Twice for Prescriptions For Beneficiaries in Hospice."

Federal regulations limit the circumstances in which a Medicare hospice provider may discharge a patient from its care. In accordance with § 418.26, discharge from hospice care is permissible when the patient moves out of the provider's service area, is determined to be no longer terminally ill, or for cause. Hospices may not discharge the patient at their discretion, even if the care may be costly or inconvenient for the hospice program. As we indicated in the FY 2015 Hospice Wage Index and Payment Rate Update proposed and final rules, we understand that the rate of live discharges should not be zero, given the uncertainties of prognostication and the ability of beneficiaries and their families to revoke the hospice election at any time. On July 1, 2012, we began collecting discharge information on the claim to capture the reason for all types of discharges which includes, death, revocation, transfer to another hospice, moving out of the hospice's service area, discharge for cause, or due to the beneficiary no longer being considered terminally ill (that is, no longer qualifying for hospice services). Based upon the additional discharge information, Abt Associates, our research contractor performed analysis on FY 2014 claims to identify those beneficiaries who were discharged alive. In order to better understand the characteristics of hospices with high live discharge rates, we examined the aggregate cap status, skilled visit intensity; average lengths of stay; and non-hospice spending rates per beneficiary.

While Figure 3 demonstrates an incremental decrease in average annual rates of live discharge rates from 2006 to 2014, peaking in 2007, there has been a leveling off at around 18 percent over the past several years.

Figure 3: Annual Average Live Discharge Rates for FYs 2006 through 2014



Source: FY 2014 claims from SSS Analytic File.

Among hospices with 50 or more discharges (discharged alive or deceased), there is significant variation in the rate of live discharge between the 10th and 90th percentiles (see Table 6). Most notably, hospices at the 95th percentile discharged 50 percent or more of their patients alive in FY 2014.

TABLE 6—DISTRIBUTION OF LIVE DISCHARGE RATES IN FY 2014 FOR HOSPICES WITH 50 OR MORE LIVE DISCHARGES

Statistic	Live discharge rate (%)
5th Percentile	7.4
10th Percentile	8.9
25th Percentile	12.3
Median	17.5
75th Percentile	26.2
90th Percentile	39.1
95th Percentile	50.0
Note: n = 3,135	

Source: FY 2014 claims from SSS Analytic File.

In FY 2014, we found that hospices with high live discharge rates also, on average, provided fewer visits per week. Those hospices with live discharge rates at or above the 90th percentile provided, on average, 4.05 visits per week. Hospices with live discharge rates below the 90th percentile provided, on average, 4.73 visits per week. We also found in FY 2014 that, when focusing on visits classified as skilled nursing or medical social services, hospices with live discharge rates at or above the 90th percentile provided, on average, 1.88 visits per week versus hospices with live discharge rates below the 90th percentile that provided, on average, 2.34 visits per week.

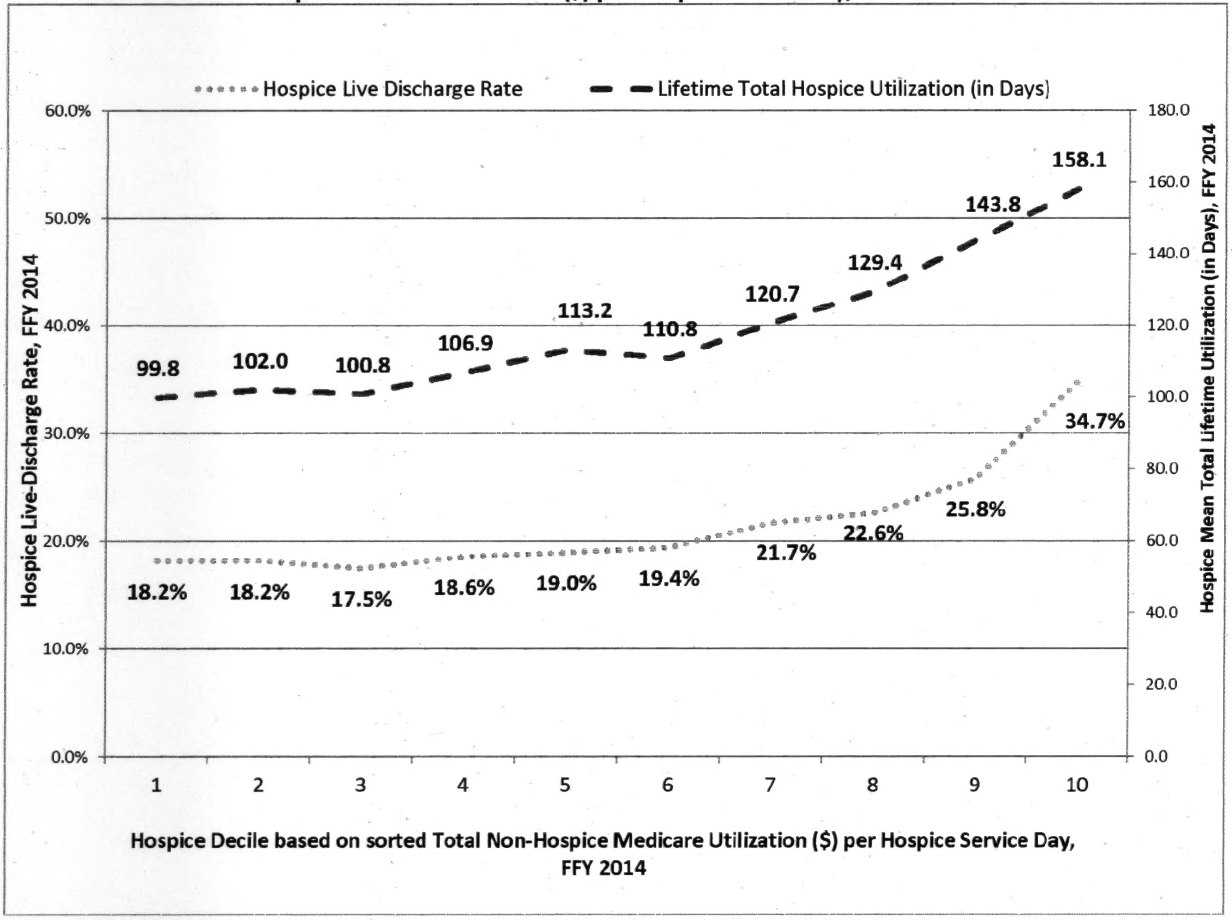
We examined whether there was a relationship between hospices with high live discharge rates, average lengths of stay, and non-hospice spending per beneficiary per day (see Table 7 and Figure 2). Hospices with patients that, on average, accounted for $27 per day in non-hospice spending while in hospice (decile 10 in Table 7 and Figure 4) had live discharge rates that were, on average, about 34.7 percent and had an average lifetime length of stay of 158 days. In contrast, hospices with patients that, on average, accounted for only $3.66 per day in non-hospice spending while in a hospice election (decile 1 in Table 7 and Figure 4) had live discharge rates that were, on average, about 18.2 percent and had an average lifetime length of stay of 99.8 days. In other words, hospices in the highest decile, according to their level of non-hospice spending for patients in a hospice election, had live discharge rates and average lifetime lengths of stay that averaged 90 percent and 58 percent higher, respectively, than the hospices in lowest decile.

TABLE 7—MEAN DAILY NON-HOSPICE MEDICARE UTILIZATION AND SUM TOTAL NON-HOSPICE UTILIZATION BY HOSPICE PROVIDER DECILE BASED ON SORTED NON-HOSPICE MEDICARE UTILIZATION PER HOSPICE DAY, FY 2014

Decile	Non-hospice Medicare ($) per hospice service day	Total non-hospice Medicare ($)
1	$3.66	$21,981,020
2	5.50	39,167,526
3	6.88	52,038,093
4	8.11	67,119,545
5	9.26	79,829,044
6	10.63	99,430,439
7	12.12	143,575,036
8	14.03	163,323,857
9	16.84	162,402,299
10	26.60	233,419,872
All Hospices	11.37	1,062,286,730

Note: Analysis of 100 percent Medicare Analytic Files, FY 2014. Cohort is hospices with 50+ total discharges in FY 2014 [n = 3,135]. Hospice deciles are based on estimates of total non-hospice Medicare utilization ($) per hospice service day, excluding utilization on hospice admission or live discharge days.

Figure 4: Live Discharge Rates and Mean Total Lifetime Hospice Utilization (in Days) by Decile of Non-Hospice Medicare Utilization ($) per Hospice Service Day, FFY 2014



Note: Analysis of 100 percent Medicare Analytic Files, FFY 2014. Cohort is hospices with 50+ total discharges in FFY 2014 [n=3,135]. Hospice deciles are based on estimates of total non-hospice Medicare utilization ($) per hospice service day, excluding utilization on hospice admission or live discharge days; total lifetime hospice utilization is calculated as mean of FFY 2014 beneficiaries that last used the hospice; live discharge rates are calculated as percentage of beneficiaries discharged alive, FFY 2014.

The analytic findings in Table 7 and Figure 4 suggest that some hospices may be using the Medicare Hospice program inappropriately as a long-term care ("custodial") benefit rather than an end of life benefit for terminal beneficiaries. As previously discussed in reports by MedPAC, there is a concern that hospices may be admitting beneficiaries who do not legitimately meet hospice eligibility criteria. Additionally, the Office of the Inspector General (OIG), has raised concerns about the potential for hospices to target beneficiaries who have long lengths of stay or certain diagnoses because they may offer the hospices the greatest financial gain.[9] We continue to communicate and collaborate across CMS to improve monitoring and oversight activities of hospice activities. We expect to analyze more recent hospice claims and cost report data as they become available to determine whether additional regulatory proposals to reform and strengthen the Medicare hospice benefit are warranted.

d. Skilled Visits in the Last Days of Life

As we noted in the FY 2016 Hospice Wage Index and Payment Rate Update final rule (80 FR 47164), we are concerned that many beneficiaries are not receiving skilled visits during the last few days of life. At the end of life, patient needs typically surge and more intensive services are warranted. However, analysis of FY 2014 claims data shows that on any given day during the last 7 days of a hospice election, nearly 47 percent of the time the patient has not received a skilled visit (skilled nursing or social worker visit) (see Table 8). Moreover, on the day of death nearly 26 percent of beneficiaries did not receive a skilled visit (skilled nursing or social work visit). While Table 8 shows the frequency and length of skilled nursing and social work visits combined during the last 7 days of a hospice election in FY 2014, Tables 9 and 10 show the frequency and length of visits for skilled nursing and social work separately. Analysis of FY 2014 claims data shows that on any given day during the last 7 days of a hospice election, almost 49 percent of the time the patient had not received a visit by a skilled nurse, and 91 percent of the time the patient had not received a visit by a social worker (see Tables 9 and 10, respectively). We believe it is important to assure that beneficiaries and their families and caregivers are, in fact, receiving the level of care necessary during critical periods such as the very end of life.

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[9] *Medicare Hospices Have Financial Incentives To Provide Care in Assisted Living Facilities OEI–02–14–00070.*

TABLE 8—FREQUENCY AND LENGTH OF SKILLED NURSING AND SOCIAL WORK VISITS (COMBINED) DURING THE LAST SEVEN DAYS OF A HOSPICE ELECTION, FY 2014

Visit length	Day of death	One day before death (%)	Two days before death (%)	Three days before death (%)	Four days before death (%)	Five days before death (%)	Six days before death (%)	Last seven days combined (%)
No visit	25.8	39.0	45.7	50.2	53.5	56.2	58.5	46.3
15 mins to 1 hr	24.6	28.5	26.6	25.4	24.3	23.5	22.7	25.1
1 hr 15 m to 2 hrs	24.9	19.1	17.1	15.6	14.4	13.4	12.6	16.9
2 hrs 15 m to 3 hrs	12.7	7.0	5.7	4.9	4.4	4.1	3.5	6.3
3 hrs 15 m to 3 hrs 45m	4.4	2.3	1.8	1.6	1.3	1.2	1.1	2.0
4 or more hrs	7.6	4.2	3.0	2.4	2.1	1.8	1.6	3.4
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Source: FY 2014 hospice claims data from the Standard Analytic Files for CY 2013 (as of June 30, 2014) and CY 2014 (as of December 31, 2015).

TABLE 9—FREQUENCY AND LENGTH OF SKILLED NURSING VISITS DURING THE LAST SEVEN DAYS OF A HOSPICE ELECTION, FY 2014

Visit length	Day of death	One day before death (%)	Two days before death (%)	Three days before death (%)	Four days before death (%)	Five days before death (%)	Six days before death (%)	Last seven days combined (%)
No visit	27.2	41.6	48.6	53.1	56.5	59.2	61.5	48.9
15 mins to 1 hr	25.1	29.5	27.1	25.5	24.3	23.3	22.3	25.5
1 hr 15 m to 2 hrs	25.2	18.6	16.5	14.8	13.6	12.6	11.8	16.4
2 hrs 15 m to 3 hrs	12.3	5.5	4.4	3.7	3.3	2.9	2.6	5.2
3 hrs 15 m to 3 hrs 45m	4.0	1.7	1.3	1.0	0.8	0.8	0.8	1.6
4 or more hrs	6.3	3.2	2.2	1.8	1.5	1.3	1.2	2.6
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Source: FY 2014 hospice claims data from the Standard Analytic Files for CY 2013 (as of June 30, 2014) and CY 2014 (as of December 31, 2015).

TABLE 10—FREQUENCY AND LENGTH OF SOCIAL WORK VISITS DURING THE LAST SEVEN DAYS OF A HOSPICE ELECTION, FY 2014

Visit length	Day of death	One day before death (%)	Two days before death (%)	Three days before death (%)	Four days before death (%)	Five days before death (%)	Six days before death (%)	Last seven days combined (%)
No visit	91.6	89.1	90.2	90.9	91.5	91.9	92.3	91.0
15 mins to 1 hr	4.9	7.1	6.4	6.1	5.7	5.5	5.2	5.8
1 hr 15 m to 2 hrs	2.5	3.1	2.8	2.6	2.4	2.2	2.1	2.6
2 hrs 15 m to 3 hrs	0.6	0.6	0.4	0.3	0.2	0.2	0.2	0.4
3 hrs 15 m to 3 hrs 45m	0.2	0.0	0.0	0.0	0.0	0.0	0.0	0.0
4 or more hrs	0.2	0.1	0.1	0.0	0.0	0.0	0.0	0.1
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Source: FY 2014 hospice claims data from the Standard Analytic Files for CY 2013 (as of June 30, 2014) and CY 2014 (as of December 31, 2015).

A recent article published in the Journal of American Medicine (JAMA) titled "Examining Variation in Hospice Visits by Professional Staff in the Last 2 Days of Life" also highlighted concerns regarding the lack of visits by professional hospice staff (defined as nursing staff (RN and LPN), social workers, nurse practitioners, or physicians) in the last days of a hospice episode. This study found that, of the 661,557 Medicare hospice beneficiaries who died in FY 2014, 81,478 (12.3 percent) received no professional staff visits in the last 2 days of life. Furthermore, professional staff from 281 hospice programs, with at least 30 discharges during federal fiscal year 2014, did not visit any of their patients who were entitled to have received such RHC services during the last 2 days of life. Additionally, the investigation demonstrated that black patients and frail, older adults residing in nursing homes and enrolled in Medicare hospice often did not receive visits from hospice staff in the last 2 days of life, raising concerns over disparities of care. The authors believe that further research is needed in order to understand whether a lack of visits by professional staff affects the quality of care for the dying person and their family.[10] The last week of life is typically the period in the terminal illness trajectory with the highest symptom burden. Particularly during the last few days before death, patients experience a myriad of physical and emotional symptoms, necessitating close care and attention from the integrated hospice team. Several organizations and panels have identified care of the imminently dying patient as an important domain of palliative and hospice care and established guidelines and recommendations related to this high priority aspect of healthcare that affects a large number of people. This is discussed further in section III.C.6, Proposed Updates to the Hospice Quality Reporting Program, where a new hospice quality reporting measure is proposed, "Hospice Visits when Death is Imminent". We believe that the implementation of the Service Intensity Add-on (SIA) payment, finalized in the FY 2016 Hospice Wage Index and Payment Rate Update final rule (80 FR 47164 through 47177), represents an incremental step toward encouraging higher frequency of much-needed end of life care by encouraging visits during beneficiaries' most intensive time of need for skilled care—the last 7 days of life.

2. Monitoring for Impacts of Hospice Payment Reform

As noted above, in the FY 2016 Hospice Wage Index and Payment Rate Update final rule (80 FR 47142), we finalized the creation of two RHC rates—one RHC rate for the first 60 days of hospice care and a second RHC rate for days 61 and beyond. As noted in section III.A.1.d, in the same final rule, we also created a SIA payment. The SIA payment is paid in addition to the RHC per diem payment for direct care provided by a RN or social worker in the last 7 days of life. The two RHC rates and the SIA payment became effective on January 1, 2016. The goal of these hospice payment reform changes is to more accurately align hospice payment with resource utilization while encouraging appropriate, high-quality hospice care, and maximizing beneficiary, family, and caregiver satisfaction with care. As noted in the FY 2016 final rule, as data become available, we will monitor the impact of the hospice payment reform changes finalized in the rule as well as continue to monitor general hospice trends to help inform future policy efforts and program integrity measures. This monitoring and analysis will include, but not be limited to, monitoring hospice diagnosis reporting, lengths of stay, live discharge patterns and their relationship with the provision of services and the aggregate cap, non-hospice spending for Parts A, B and D during a hospice election, trends of live discharge at or around day 61 of hospice care, and readmissions after a 60 day lapse since live discharge.

Specifically, we will work with our monitoring contractor, Acumen LLC, to conduct comprehensive, real time monitoring and analysis of hospice claims to help identify program vulnerabilities, as well as potential areas of fraud and abuse. To monitor overall usage and payment trends in hospice, Acumen will track monthly and annual changes in the following metrics.

1. Percentage of Medicare beneficiaries electing hospice
2. Total number of Medicare hospice patients
3. Demographic and geographic location characteristics among Medicare hospice patients
4. Number and share of Medicare hospice patients presenting with various terminal conditions, aggregated by broader clinical categories
5. Total payment for hospice care (also by level of care)
6. Number and share of live discharges
7. Number and rate of readmissions
8. Average length of episodes
9. Proportion of days by level of care (RHC, CHC, general inpatient care (GIP), and inpatient respite care (IRC))
10. Volume and payments for non-hospice services used during hospice stays

Additionally, to address policy impacts, specifically for the hospice payment reform provisions finalized in the FY 2016 Hospice Wage Index and Payment Rate Update final rule, Acumen will longitudinally monitor the effect of changes in the RHC payment rate on volume and payments for hospice care using the following metrics:

1. Average length of hospice stays
2. Total number and share of live discharges
3. Average readmissions rates within or after 60 days

Acumen will monitor the effects of the new SIA payment policy using the following metrics:

1. Total number of nursing visits (also separately for RNs and LPNs)
2. Total number of visits by social workers
3. Average number of services billed per discharge
4. Average number of hours billed per discharge and per hospice day
5. Average number of services billed during the first 7 days, middle of a stay, and last 7 days of a hospice stay
6. Intensity of services billed during the first 7 days, middle of a stay, and last 7 days of a hospice stay

These measures are further broken down by level of care (for example, RHC versus CHC) to understand the effect of the SIA payment policy on incentivizing care at the RHC level.

The monitoring analysis can be examined at the aggregate level as well as at the individual provider level. This comprehensive and provider-level monitoring will not only inform future policymaking decisions but targeted program integrity efforts as well.

In addition to Acumen LLC's comprehensive, real time monitoring and analysis of hospice claims, we have developed a hospice Program for Evaluating Payment Patterns Electronic Reports (PEPPER), which generates informational tables provided to hospices that summarize provider-specific Medicare data statistics for target areas often associated with Medicare improper payments due to billing, coding and/or admission necessity issues. The intent of the hospice PEPPER is to help inform hospices of potential program administration and other vulnerabilities to provide the opportunity for improvement. Specifically, these reports can be used to compare performance of a specific hospice to that of other hospices in various geographic delineations, including the nation, specific MAC jurisdictions, and states. PEPPER can also be used to compare data statistics over time to identify changes in billing practices, to pinpoint areas in need of auditing and monitoring, identify other potential problems and to help hospices achieve CMS' goal of reducing and preventing improper payments. The hospice PEPPER provides various metrics, including several markers of live discharges on various time intervals, markedly long lengths of stay, as well as information regarding levels and frequency of hospice care provided in various settings. Recently added metrics include differentiating reasons for live discharges (for example, beneficiary being no longer terminally ill, patient revocations), live discharges with length of stay between 61 to179 days, claims with a single diagnosis coded, and hospice episodes of care when no GIP or CHC is provided.

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[10] Teno, J., Plotzke, M., Christian, T. & Gozalo, P. (2016). Examining Variation in Hospice Visits by Professional Staff in the Last 2 Days of Life. Journal of American Medicine Internal Medicine. Published online February 8, 2016. doi:10.1001/jamainternmed.2015.7479.

B. Proposed FY 2017 Hospice Wage Index and Rate Update

1. Proposed FY 2017 Hospice Wage Index

a. Background

The hospice wage index is used to adjust payment rates for hospice agencies under the Medicare program to reflect local differences in area wage levels, based on the location where services are furnished. The hospice wage index utilizes the wage adjustment factors used by the Secretary for purposes of section 1886(d)(3)(E) of the Act for hospital wage adjustments. Our regulations at § 418.306(c) require each labor market to be established using the most current hospital wage data available, including any changes made by OMB to the Metropolitan Statistical Areas (MSAs) definitions.

We use the previous FY's hospital wage index data to calculate the hospice wage index values. For FY 2017, the hospice wage index will be based on the FY 2016 hospital pre-floor, pre-reclassified wage index. This means that the hospital wage data used for the hospice wage index is not adjusted to take into account any geographic reclassification of hospitals including those in accordance with section 1886(d)(8)(B) or 1886(d)(10) of the Act. The appropriate wage index value is applied to the labor portion of the payment rate based on the geographic area in which the beneficiary resides when receiving RHC or CHC. The appropriate wage index value is applied to the labor portion of the payment rate based on the geographic location of the facility for beneficiaries receiving GIP or Inpatient Respite Care (IRC).

In the FY 2006 Hospice Wage Index final rule (70 FR 45130), we adopted the changes discussed in the OMB Bulletin No. 03–04 (June 6, 2003). This bulletin announced revised definitions for MSAs and the creation of micropolitan statistical areas and combined statistical areas. The bulletin is available online at *http://www.whitehouse.gov/omb/bulletins/b03–04.html.*

When adopting OMB's new labor market designations in FY 2006, we identified some geographic areas where there were no hospitals, and thus, no hospital wage index data, which to base the calculation of the hospice wage index. In the FY 2010 Hospice Wage Index final rule (74 FR 39386), we adopted the policy that for urban labor markets without a hospital from which hospital wage index data could be derived, all of the CBSAs within the state would be used to calculate a statewide urban average pre-floor, pre-reclassified hospital wage index value to use as a reasonable proxy for these areas. In FY 2016, the only CBSA without a hospital from which hospital wage data could be derived is 25980, Hinesville-Fort Stewart, Georgia.

In the FY 2008 Hospice Wage Index final rule (72 FR 50214), we implemented a new methodology to update the hospice wage index for rural areas without a hospital, and thus no hospital wage data. In cases where there was a rural area without rural hospital wage data, we used the average pre-floor, pre-reclassified hospital wage index data from all contiguous CBSAs to represent a reasonable proxy for the rural area. The term "contiguous" means sharing a border (72 FR 50217). Currently, the only rural area without a hospital from which hospital wage data could be derived is Puerto Rico. However, our policy of imputing a rural pre-floor, pre-reclassified hospital wage index value based on the pre-floor, pre-reclassified hospital wage index (or indices) of CBSAs contiguous to a rural area without a hospital from which hospital wage data could be derived does not recognize the unique circumstances of Puerto Rico. In this proposed rule, for FY 2017, we propose to continue to use the most recent pre-floor, pre-reclassified hospital wage index value available for Puerto Rico, which is 0.4047.

As described in the August 8, 1997 Hospice Wage Index final rule (62 FR 42860), the pre-floor and pre-reclassified hospital wage index is used as the raw wage index for the hospice benefit. These raw wage index values are then subject to application of the hospice floor to compute the hospice wage index used to determine payments to hospices. Pre-floor, pre-reclassified hospital wage index values below 0.8 are adjusted by a 15 percent increase subject to a maximum wage index value of 0.8. For example, if County A has a pre-floor, pre-reclassified hospital wage index value of 0.3994, we would multiply 0.3994 by 1.15, which equals 0.4593. Since 0.4593 is not greater than 0.8, then County A's hospice wage index would be 0.4593. In another example, if County B has a pre-floor, pre-reclassified hospital wage index value of 0.7440, we would multiply 0.7440 by 1.15 which equals 0.8556. Because 0.8556 is greater than 0.8, County B's hospice wage index would be 0.8.

b. FY 2016 Implementation of New Labor Market Delineations

OMB has published subsequent bulletins regarding CBSA changes. On February 28, 2013, OMB issued OMB Bulletin No. 13–01, announcing revisions to the delineation of MSAs, Micropolitan Statistical Areas, and Combines Statistical Areas, and guidance on uses of the delineation in these areas. A copy of this bulletin is available online at: *http://www.whitehouse.gov/sites/default/files/omb/bulletins/2013/b-13–01.pdf.* This bulletin states that it "provides the delineations of all Metropolitan Statistical Areas, Metropolitan Divisions, Micropolitan Statistical Areas, Combined Statistical Areas, and New England City and Town Areas in the United States and Puerto Rico based on the standards published on June 28, 2010, in the **Federal Register** (75 FR 37246–37252) and Census Bureau data." In the FY 2016 Hospice Wage Index final rule (80 FR 47178), we adopted the OMB's new area delineations using a 1-year transition. In the FY 2016 Hospice Wage Index and Payment Rate Update final rule (80 FR 47178), we stated that beginning October 1, 2016, the wage index for all hospice payments would be fully based on the new OMB delineations.

The proposed wage index applicable for FY 2017 is available on the CMS Web site at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/index.html.* The proposed wage index applicable for FY 2017 will not be published in the **Federal Register.** The proposed hospice wage index for FY 2017 would be effective October 1, 2016 through September 30, 2017.

2. Proposed Hospice Payment Update Percentage

Section 4441(a) of the Balanced Budget Act of 1997 (BBA) amended section 1814(i)(1)(C)(ii)(VI) of the Act to establish updates to hospice rates for FYs 1998 through 2002. Hospice rates were to be updated by a factor equal to the inpatient hospital market basket index set out under section 1886(b)(3)(B)(iii) of the Act, minus 1 percentage point. Payment rates for FYs since 2002 have been updated according to section 1814(i)(1)(C)(ii)(VII) of the Act, which states that the update to the payment rates for subsequent FYs must be the inpatient market basket percentage for that FY. The Act requires us to use the inpatient hospital market basket to determine the hospice payment rate update. In addition, section 3401(g) of the Affordable Care

Act mandates that, starting with FY 2013 (and in subsequent FYs), the hospice payment update percentage will be annually reduced by changes in economy-wide productivity as specified in section 1886(b)(3)(B)(xi)(II) of the Act. The statute defines the productivity adjustment to be equal to the 10-year moving average of changes in annual economy-wide private nonfarm business multifactor productivity (MFP) (as projected by the Secretary for the 10-year period ending with the applicable FY, year, cost reporting period, or other annual period) (the "MFP adjustment"). A complete description of the MFP projection methodology is available on our Web site at: *http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/MedicareProgramRatesStats/MarketBasketResearch.html.*

In addition to the MFP adjustment, section 3401(g) of the Affordable Care Act also mandates that in FY 2013 through FY 2019, the hospice payment update percentage will be reduced by an additional 0.3 percentage point (although for FY 2014 to FY 2019, the potential 0.3 percentage point reduction is subject to suspension under conditions specified in section 1814(i)(1)(C)(v) of the Act). The proposed hospice payment update percentage for FY 2017 is based on the estimated inpatient hospital market basket update of 2.8 percent (based on IHS Global Insight, Inc.'s first quarter 2016 forecast with historical data through the fourth quarter of 2015). Due to the requirements at 1886(b)(3)(B)(xi)(II) and 1814(i)(1)(C)(v) of the Act, the estimated inpatient hospital market basket update for FY 2017 of 2.8 percent must be reduced by a MFP adjustment as mandated by Affordable Care Act (currently estimated to be 0.5 percentage point for FY 2017). The estimated inpatient hospital market basket update for FY 2017 is reduced further by 0.3 percentage point, as mandated by the Affordable Care Act. In effect, the proposed hospice payment update percentage for FY 2017 is 2.0 percent. We are also proposing that if more recent data are subsequently available (for example, a more recent estimate of the inpatient hospital market basket update and MFP adjustment), we would use such data, if appropriate, to determine the FY 2017 market basket update and the MFP adjustment in the FY 2017 Hospice Rate Update final rule.

Currently, the labor portion of the hospice payment rates is as follows: for RHC, 68.71 percent; for CHC, 68.71 percent; for General Inpatient Care, 64.01 percent; and for Respite Care, 54.13 percent. The non-labor portion is equal to 100 percent minus the labor portion for each level of care. Therefore, the non-labor portion of the payment rates is as follows: for RHC, 31.29 percent; for CHC, 31.29 percent; for General Inpatient Care, 35.99 percent; and for Respite Care, 45.87 percent.

3. Proposed FY 2017 Hospice Payment Rates

There are four payment categories that are distinguished by the location and intensity of the services provided. The base payments are adjusted for geographic differences in wages by multiplying the labor share, which varies by category, of each base rate by the applicable hospice wage index. A hospice is paid the RHC rate for each day the beneficiary is enrolled in hospice, unless the hospice provides continuous home care, IRC, or general inpatient care. CHC is provided during a period of patient crisis to maintain the person at home; IRC is short-term care to allow the usual caregiver to rest and be relieved from caregiving; and GIP is to treat symptoms that cannot be managed in another setting.

As discussed in the FY 2016 Hospice Wage Index and Payment Rate Update final rule (80 FR 47172), we implemented two different RHC payment rates, one RHC rate for the first 60 days and a second RHC rate for days 61 and beyond. In addition, in the final rule, we adopted a Service Intensity Add-on (SIA) payment, when direct patient care is provided by a RN or social worker during the last 7 days of the beneficiary's life. The SIA payment is equal to the CHC hourly rate multiplied by the hours of nursing or social work provided (up to 4 hours total) that occurred on the day of service, if certain criteria are met. In order to maintain budget neutrality, as required under section 1814(i)(6)(D)(ii) of the Act, the new RHC rates were adjusted by a SIA budget neutrality factor.

As discussed in the FY 2016 Hospice Wage Index and Payment Rate Update final rule (80 FR 47177), we will continue to make the SIA payments budget neutral through an annual determination of the SIA budget neutrality factor (SBNF), which will then be applied to the RHC payment rates. The SBNF will be calculated for each FY using the most current and complete FY utilization data available at the time of rulemaking. For FY 2017, the budget neutrality adjustment that would apply to days 1 through 60 is calculated to be 1.0001. The budget neutrality adjustment that would apply to days 61 and beyond is calculated to be 0.9999.

For FY 2017, we are proposing to apply a wage index standardization factor to the FY 2017 hospice payment rates in order to ensure overall budget neutrality when updating the hospice wage index with more recent hospital wage data. Wage index standardization factors are applied in other payment settings such as under home health Prospective Payment System (PPS), IRF PPS, and SNF PPS. Applying a wage index standardization factor to hospice payments would eliminate the aggregate effect of annual variations in hospital wage data. We believe that adopting a hospice wage index standardization factor would provide a safeguard to the Medicare program as well as to hospices because it would mitigate fluctuations in the wage index by ensuring that wage index updates and revisions are implemented in a budget neutral manner. To calculate the wage index standardization factor, we simulated total payments using the FY 2017 hospice wage index and compared it to our simulation of total payments using the FY 2016 hospice wage index. By dividing payments for each level of care using the FY 2017 wage index by payments for each level of care using the FY 2016 wage index, we obtain a wage index standardization factor for each level of care (RHC days 1–60, RHC days 61+, CHC, IRC, and GIP).

Lastly, the hospice payment rates for hospices that submit the required quality data would be increased by the full proposed FY 2017 hospice payment update percentage of 2.0 percent as discussed in section III.C.3. The proposed FY 2017 RHC rates are shown in Table 11. The proposed FY 2017 payment rates for CHC, IRC, and GIP are shown in Table 12.

Table 11—Proposed FY 2017 Hospice RHC Payment Rates

Code	Description	FY 2016 payment rates	SBNF	Proposed wage index standardization factor	FY 2017 proposed hospice payment update percentage	FY 2017 proposed payment rates
651	Routine Home Care (days 1–60)	$186.84	× 1.0001	× 0.9990	× 1.020	$190.41
651	Routine Home Care (days 61+)	146.83	× 0.9999	× 0.9995	× 1.020	149.68

Table 12—Proposed FY 2017 Hospice CHC, IRC, and GIP Payment Rates

Code	Description	FY 2016 payment rates	Proposed wage index standardization factor	FY 2017 proposed hospice payment update percentage	FY 2017 proposed payment rates
652	Continuous Home Care Full Rate = 24 hours of care 40.16 = FY 2017 hourly rate	$944.79	× 1.0000	× 1.020	$963.69
655	Inpatient Respite Care	167.45	× 1.0000	× 1.020	170.80
656	General Inpatient Care	720.11	× 0.9996	× 1.020	734.22

Sections 1814(i)(5)(A) through (C) of the Act require that hospices begin submitting quality data, based on measures to be specified by the Secretary. In the FY 2012 Hospice Wage Index final rule (76 FR 47320 through 47324), we implemented a Hospice Quality Reporting Program (HQRP) as required by section 3004 of the Affordable Care Act. Hospices were required to begin collecting quality data in October 2012, and submit that quality data in 2013. Section 1814(i)(5)(A)(i) of the Act requires that beginning with FY 2014 and each subsequent FY, the Secretary shall reduce the market basket update by 2 percentage points for any hospice that does not comply with the quality data submission requirements with respect to that FY. The proposed FY 2017 rates for hospices that do not submit the required quality data would be updated by the proposed FY 2017 hospice payment update percentage of 2.0 percent minus 2 percentage points. These rates are shown in Tables 13 and 14.

Table 13—Proposed FY 2017 Hospice RHC Payment Rates for Hospices That DO NOT Submit the Required Quality Data

Code	Description	FY 2016 payment rates	SBNF	Proposed wage index standardization factor	FY 2017 proposed hospice payment update of 2.0% minus 2 percentage points = 0.0%	FY 2017 proposed payment rates
651	Routine Home Care (days 1–60)	$186.84	× 1.0001	× 0.9990	× 1.000	$186.67
651	Routine Home Care (days 61+)	146.83	× 0.9999	× 0.9995	× 1.000	146.74

Table 14—Proposed FY 2017 Hospice CHC, IRC, and GIP Payment Rates for Hospices That DO NOT Submit the Required Quality Data

Code	Description	FY 2016 payment rates	Proposed wage index standardization factor	FY 2017 proposed hospice payment update of 2.0% minus 2 percentage points = 0.0%	FY 2017 proposed payment rates
652	Continuous Home Care Full Rate = 24 hours of care $39.37 = FY 2017 hourly rate	$944.79	× 1.0000	× 1.000	$944.79
655	Inpatient Respite Care	167.45	× 1.0000	× 1.000	167.45
656	General Inpatient Care	720.11	× 0.9996	× 1.000	719.82

4. Hospice Cap Amount for FY 2017

As discussed in the FY 2016 Hospice Wage Index and Payment Rate Update final rule (80 FR 47183), we implemented changes mandated by the Improving Medicare Post-Acute Care Transformation Act of 2014 (IMPACT Act). Specifically, for accounting years that end after September 30, 2016 and before October 1, 2025, the hospice cap is updated by the hospice payment update percentage rather than using the consumer price index for urban consumers (CPI–U). As required by section 1814(i)(2)(B)(ii) of the Act, the hospice cap amount for the 2016 cap year, starting on November 1, 2015 and ending on October 31, 2016, is equal to the 2015 cap amount ($27,382.63) updated by the FY 2016 hospice payment update percentage of 1.6 percent. As such, the 2016 cap amount is $27,820.75.

In the FY 2016 Hospice Wage Index and Payment Rate Update final rule (80 FR 47142), we finalized aligning the cap accounting year with the federal fiscal year beginning in 2017. Therefore, the 2017 cap year will start on October 1, 2016 and end on September 30, 2017. Table 26 in the FY 2016 Hospice Wage Index and Payment Rate Update final rule (80 FR 47185) outlines the timeframes for counting beneficiaries and payments during the 2017 transition year. The hospice cap amount for the 2017 cap year will be $28,377.17, which is equal to the 2016 cap amount ($27,820.75) updated by the FY 2017 hospice payment update percentage of 2.0 percent.

C. Proposed Updates to the Hospice Quality Reporting Program (HQRP)

1. Background and Statutory Authority

Section 3004(c) of the Affordable Care Act amended section 1814(i)(5) of the Act to authorize a quality reporting program for hospices. Section 1814(i)(5)(A)(i) of the Act requires that beginning with FY 2014 and each subsequent FY, the Secretary shall reduce the market basket update by 2 percentage points for any hospice that does not comply with the quality data submission requirements for that FY. Depending on the amount of the annual update for a particular year, a reduction of 2 percentage points could result in the annual market basket update being less than 0.0 percent for a FY and may result in payment rates that are less than payment rates for the preceding FY. Any reduction based on failure to comply with the reporting requirements, as required by section 1814(i)(5)(B) of the Act, would apply only for the particular FY involved. Any such reduction would not be cumulative or be taken into account in computing the payment amount for subsequent FYs. Section 1814(i)(5)(C) of the Act requires that each hospice submit data to the Secretary on quality measures specified by the Secretary. The data must be submitted in a form, manner, and at a time specified by the Secretary.

2. General Considerations Used for Selection of Quality Measures for the HQRP

Any measures selected by the Secretary must be endorsed by the consensus-based entity, which holds a contract regarding performance measurement, including the endorsement of quality measures, with the Secretary under section 1890(a) of the Act. This contract is currently held by the National Quality Forum (NQF). However, section 1814(i)(5)(D)(ii) of the Act provides that in the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the consensus-based entity, the Secretary may specify measures that are not so endorsed as long as due consideration is given to measures that have been endorsed or adopted by a consensus-based organization identified by the Secretary. Our paramount concern is the successful development of a HQRP that promotes the delivery of high quality healthcare services. We seek to adopt measures for the HQRP that promote person-centered, high quality, and safe care. Our measure selection activities for the HQRP take into consideration input from the Measure Applications Partnership (MAP), convened by the NQF, as part of the established CMS pre-rulemaking process required under section 1890A of the Act. The MAP is a public-private partnership comprised of multi-stakeholder groups convened by the NQF for the primary purpose of providing input to CMS on the selection of certain categories of quality and efficiency measures, as required by section 1890A(a)(3) of the Act. By February 1st of each year, the NQF must provide that input to CMS. Input from the MAP is located at: *http://www.qualityforum.org/Setting_Priorities/Partnership/Measure_Applications_Partnership.aspx.* We also take into account national priorities, such as those established by the National Priorities Partnership at (*http://www.qualityforum.org/npp/*), the HHS Strategic Plan (*http://www.hhs.gov/secretary/about/priorities/priorities.html*), the National Strategy for Quality Improvement in Healthcare, (*http://www.ahrq.gov/workingforquality/nqs/nqs2013annlrpt.htm*) and the CMS Quality Strategy (*https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/QualityInitiativesGenInfo/CMS-Quality-Strategy.html*). To the extent practicable, we have sought to adopt measures endorsed by member organizations of the National Consensus Project (NCP), recommended by multi-stakeholder organizations, and developed with the input of providers, purchasers/payers, and other stakeholders.

3. Policy for Retention of HQRP Measures Adopted for Previous Payment Determinations

In the FY 2016 Hospice Wage Index final rule, for the purpose of streamlining the rulemaking process, we stated that when we adopt measures for the HQRP beginning with a payment determination year, these measures would automatically be adopted for all subsequent years' payment determinations, unless we proposed to remove, suspend, or replace the measures. Quality measures would be considered for removal by CMS if:

- Measure performance among hospices was so high and unvarying that meaningful distinction in improvements in performance could no longer be made;
- Performance or improvement on a measure did not result in better patient outcomes;
- A measure did not align with current clinical guidelines or practice;
- A more broadly applicable measure (across settings, populations, or conditions) for the particular topic was available;
- A measure that was more proximal in time to desired patient outcomes for the particular topic was available;
- A measure that was more strongly associated with desired patient outcomes for the particular topic was available; or
- Collection or public reporting of a measure led to negative unintended consequences.

For any such removal, the public would be given an opportunity to comment through the annual rulemaking process. However, if there was reason to believe continued collection of a measure raised potential safety concerns, we would take immediate action to remove the measure from the HQRP and not wait for the annual rulemaking cycle. The measures would be promptly removed and we would immediately notify hospices and the public of such a decision through the usual CMS HQRP communication channels, including postings and announcements on the CMS HQRP Web site, Medicare Learning Network (MLN) eNews communications, National provider association calls, and announcements on Open Door Forums and Special Open Door Forums. In such instances, the removal of a measure would be formally announced in the next annual rulemaking cycle.

To further streamline the rulemaking process, we propose to codify that if measures we are using in the HQRP undergo non-substantive changes in the specifications as part of their NQF re-endorsement process, we would subsequently utilize the measure with their new endorsed status in the HQRP without going through new notice-and-comment rulemaking. As mentioned previously, quality measures selected for the HQRP must be endorsed by the NQF unless they meet the statutory criteria for exception under section 1814(i)(5)(D)(ii) of the Act. The NQF is a voluntary consensus standard-setting organization with a diverse representation of consumer, purchaser, provider, academic, clinical, and other healthcare stakeholder organizations. The NQF was established to standardize healthcare quality measurement and reporting through its consensus measure development process (*http://www.qualityforum.org/About_NQF/Mission_and_Vision.aspx*). The NQF undertakes review of: (1) New quality measures and national consensus standards for measuring and publicly reporting on performance; (2) regular maintenance processes for endorsed quality measures; (3) measures with time limited endorsement for consideration of full endorsement; and (4) ad hoc review of endorsed quality measures, practices, consensus standards, or events with adequate justification to substantiate the review. Through NQF's measure maintenance process, NQF-endorsed measures are sometimes updated to incorporate changes that we believe do not substantially change the nature of the measure. Examples of such changes could be updated diagnosis or procedure codes, or changes to exclusions to a particular patient/consumer population or definitions. We believe these types of maintenance changes are distinct from more substantive changes to measures. Additionally, since the NQF endorsement and measure maintenance process is one that ensures transparency, public input, and discussion among representatives across the healthcare enterprise,[11] we believe that the NQF measure endorsement and maintenance process itself is transparent, scientifically rigorous, and provides opportunity for public input. Thus, we propose to codify at § 418.312 that if the NQF makes only non-substantive changes to specifications for HQRP measures in the NQF's re-endorsement process we would continue to utilize the measure in its new endorsed status. If NQF-endorsed specifications change and we do not adopt those changes, then we would propose the measure as an application (that is, with CMS modifications). An application of a NQF-endorsed quality measure is utilized in instances when we have identified a need to use a NQF-endorsed measure in a QRP, but needs to use it with one or more modifications to the quality measure's specifications. We may modify one or more of the following aspects of a NQF-endorsed quality measure: (1) Numerator; (2) denominator; (3) setting; (4) look-back period; (5) calculation period; (6) risk adjustment; and (7) revisions to data elements used to collect the data the data required for the measure. Reasons for not adopting changes in measure specifications may include any of the aforementioned criteria for removal, including that the new specification does not align with clinical guidelines or practice, or that the new specification leads to negative unintended consequences. Finally, we will continue to use rulemaking to adopt substantive updates made by the NQF to the endorsed measures we have adopted for the HQRP. We continue to make these determinations about what constitutes a substantive vs non-substantive change on a measure-by-measure basis. We will continue to provide updates about changes to measure specifications as a result of NQF endorsement or maintenance processes through the normal CMS HQRP communication channels, including postings and announcements on the CMS HQRP Web site, MLN eNews communications, National provider association calls, and announcements on Open Door Forums and Special Open Door Forums.

4. Previously Adopted Quality Measures for FY 2017 and FY 2018 Payment Determination

As stated in the CY 2013 HH PPS final rule (77 FR 67068 through 67133), We expanded the set of required measures to include additional measures endorsed by NQF. We also stated that to support the standardized collection and calculation of quality measures by CMS, collection of the needed data elements would require a standardized data collection instrument. In response, we developed, tested, and implemented a hospice patient-level item set, the HIS. Hospices are required to submit a HIS-Admission record and a HIS-Discharge record for each patient admission to hospice since July 1, 2014. In developing the standardized HIS, we considered comments offered in response to the CY 2013 HH PPS proposed rule (77 FR 41548 through 41573). In the FY 2014 Hospice Wage Index final rule (78 FR 48257), and in compliance with section 1814(i)(5)(C) of the Act, we finalized the specific collection of data items that support the following 6 NQF endorsed measures and 1 modified measure for hospice:

- NQF #1617 Patients Treated with an Opioid who are Given a Bowel Regimen.
- NQF #1634 Pain Screening.
- NQF #1637 Pain Assessment.
- NQF #1638 Dyspnea Treatment.
- NQF #1639 Dyspnea Screening.
- NQF #1641 Treatment Preferences.
- NQF #1647 Beliefs/Values Addressed (if desired by the patient) (modified).

To achieve a comprehensive set of hospice quality measures available for widespread use for quality improvement and informed decision making, and to carry out our commitment to develop a quality reporting program for hospices that uses standardized methods to collect data needed to calculate quality measures, we finalized the HIS effective July 1, 2014 (78 FR 48258). To meet the quality reporting requirements for hospices for the FY 2016 payment determination and each subsequent year, we require regular and ongoing electronic submission of the HIS data for each patient admission to hospice after July 1, 2014, regardless of payer or patient age (78 FR 48234 through 48258). We finalized a requirement in the FY 2014 Hospice Wage Index final rule (78 FR 48258) that hospice providers collect data on all patients to ensure that all patients regardless of payer or patient age are receiving the same care and that provider metrics measure performance across the spectrum of patients.

Hospices are required to complete and submit a HIS-Admission and a HIS-Discharge record for each patient admission. Hospices failing to report quality data via the HIS for patient admissions occurring in 2016 will have their market basket update reduced by 2 percentage points in FY 2018 (beginning in October 1, 2017). In the FY 2015 Hospice Wage Index final rule (79 FR 50485 through 50487), we finalized the proposal to codify the HIS submission requirement at § 418.312. The System of Record (SOR) Notice titled "Hospice Item Set (HIS) System," SOR number 09–70–0548, was published in the **Federal Register** on April 8, 2014 (79 FR 19341).

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[11] "NQF: How Endorsement Happens—National Quality Forum." 2010. 26 Jan. 2016 *http://www.qualityforum.org/Measuring_Performance/ABCs/How_Endorsement_Happens.aspx.*

TABLE 15—PREVIOUSLY FINALIZED QUALITY MEASURES AFFECTING THE FY 2017 PAYMENT DETERMINATION AND SUBSEQUENT YEAR

Quality measure	NQF ID No.	Type	Submission method	Data submission deadlines
Treatment Preferences	1641	Process Measure	Hospice Item Set	Within 30 days of patient admission or discharge (Event Date).
Beliefs/Values Addressed	1647			
Pain Screening	1634			
Pain Assessment	1637			
Dyspnea Screening	1639			
Dyspnea Treatment	1638			
Patients Treated with an Opioid who are Given a Bowel Regimen.	1617			

5. Proposed Removal of Previously Adopted Measures

As mentioned in section III.E.3, a measure that is adopted and implemented in the HQRP will be adopted for all subsequent years, unless the measure is proposed for removal, suspension, or replacement by CMS. Policies and criteria for removing a measure include those mentioned in section III.E.3 of this proposed rule. We are not proposing to remove any of the current HQRP measures at this time. Any future proposals regarding removal, suspension, or replacement of measures will be proposed in this section of future rules.

6. Proposed New Quality Measures for FY 2019 Payment Determinations and Subsequent Years and Concepts Under Consideration for Future Years

a. Background and Considerations in Developing New Quality Measures for the HQRP

As noted in section III.E.2 of this proposed rule, our paramount concern is to develop quality measures that promote care that is person-centered, high quality, and safe. In identifying priority areas for future measure enhancement and development, we take into consideration input from numerous stakeholders, including the MAP, the MedPAC, Technical Expert Panels (TEP), and national priorities, such as those established by the National Priorities Partnership, the HHS Strategic Plan, the National Strategy for Quality Improvement in Healthcare, and the CMS Quality Strategy. In addition, we takes into consideration vital feedback and input from research published by our payment reform contractor, as well as important observations and recommendations contained in the Institute of Medicine (IOM) report, titled "Dying in America", released in September 2014.[12] Finally, the current HQRP measure set is also an important consideration for future measure development areas; future measure development areas should complement the current HQRP measure set, which includes HIS measures and Consumer Assessment of Healthcare Providers and Systems (CAHPS®) Hospice Survey measures.

As stated in the FY 2016 Hospice Wage Index final rule (80 FR 47188), based on input from stakeholders, we identified several high priority areas for future measure development, including: A patient reported pain outcome measure; claims-based measures focused on care practices patterns, including skilled visits in the last days of life; responsiveness of the hospice to patient and family care needs; and hospice team communication and care coordination. Of the aforementioned measure areas, we have pursued measure development for 2 quality measures: Hospice Visits when Death is Imminent Measure Pair, and Hospice and Palliative Care Composite Process Measure-Comprehensive Assessment at Admission. These measures were included on CMS' List of Measures under Consideration (MUC list) for 2015, and discussed at the MAP meeting on December 14 and 15, 2015. All materials related to the MUC list and the MAP's recommendations for each measure can be found on the National Quality Forum Web site, MAP Post-Acute Care/Long-Term Care Workgroup Web page at: *http://www.qualityforum.org/ProjectMaterials.aspx?projectID=75370*. The MAP supported the direction of each proposed measure.

b. New Quality Measures for the FY 2019 Payment Determination and Subsequent Years

We are proposing 2 new quality measures for the HRQP for the FY 2019 payment determination and subsequent years: Hospice Visits when Death is Imminent Measure Pair, and Hospice and Palliative Care Composite Process Measure-Comprehensive Assessment at Admission.

(1) Proposed Quality Measure 1: Hospice Visits When Death is Imminent Measure Pair

Measure Background. This measure set addresses whether a hospice patient and their caregivers' needs were addressed by the hospice staff during the last days of life. This measure is specified as a set of 2 measures as follows:

Measure 1—assesses the percentage of patients receiving at least 1 visit from registered nurses, physicians, nurse practitioners, or physician assistants in the last 3 days of life and addresses case management and clinical care.

Measure 2—assesses the percentage of patients receiving at least 2 visits from medical social workers, chaplains or spiritual counselors, licensed practical nurses, or hospice aides in the last 7 days of life and gives providers the flexibility to provide individualized care that is in line with the patient, family, and caregiver's preferences and goals for care and contributing to the overall well-being of the individual and others important in their life.

Measure Importance. The last week of life is typically the period in the terminal illness trajectory with the highest symptom burden. Particularly during the last few days before death, patients experience myriad physical and emotional symptoms, necessitating close care and attention from the integrated hospice team. Hospice responsiveness during times of patient and caregiver need is an important aspect of care for hospice consumers. In addition, clinician visits to patients at the end of life have been demonstrated to be associated with improved outcomes such as decreased risk of hospitalization, emergency room visits, and hospital death, and decreased distress for caregivers and higher satisfaction with care.

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[12] IOM (Institute of Medicine). 2014. Dying in America: Improving quality and honoring individual preferences near the end of life. Washington, DC: The National Academies Press.

Several organizations and panels have identified care of the imminently dying patient as an important domain of palliative and hospice care and established guidelines and recommendations related to this high priority aspect of healthcare that affects a large number of people. The NQF 2006 report *A Framework for Preferred Practices for Palliative Care Quality*[13] and the NCP Clinical Practice Guidelines for Quality Palliative Care[14] recommend that signs and symptoms of impending death are recognized, communicated and educated, and care appropriate for the phase of illness is provided. The American College of Physicians Clinical Practice Guidelines[15] recommend that clinicians regularly assess pain, dyspnea, and depression for patients with serious illness at the end of life. These measures address this high priority area by assessing hospice staff visits to patients and caregivers during the final days of life when patients and caregivers typically experience higher symptom and caregiving burdens, and therefore a higher need for care.

Measure Impact. The literature shows that health care providers' practice is responsive to quality measuring and reporting.[16] We believe that this research, while not specific to hospices, reasonably predicts the effect of measures on hospice provider behavior. Collecting information about hospice staff visits for measuring quality of care, in addition to the requirement of reporting visits from some disciplines on hospice claims, will encourage hospices to visit patients and caregivers and provide services that will address their care needs and improve quality of life during the patients' last days of life.

Performance Gap. The 2014 Abt Medicare Hospice Payment Reform Report indicated that 28.9 percent of Routine Home Care hospice patients did not receive a skilled visit on the last day of life.[17] The Report defines a 'skilled visit' as a visit from a nurse, social worker, or therapist. This percentage could be, in part, a result of rapid decline and unexpected death. The report revealed variation in receipt of visits at the end of life related to multiple factors. Patients who died on a weekday rather than a weekend, patients with a very short length of stay (5 days or less), and patients aged 84 and younger were more likely to receive a skilled visit in the last 2 days of life. Smaller hospices and hospices in operation for 5 years or less were slightly less likely to provide a visit at the end of life. States with the lowest rates of no visits in the last days of life were some of the more rural states (ND, WI, TN, KS, VT), whereas states with the highest rates of no visits were more urban (NJ, MA, OR, WA, MN).

Existing Measures. This quality measure set will fill a gap by addressing hospice care provided at the end of life. No current HQRP measures address care beyond the hospice initial and comprehensive assessment period, nor do any current HQRP measures relate to the assessment of hospice staff visits to patients and caregivers in the last week of life.

Stakeholder Support. A TEP convened by our measure development contractor, RTI International, on May 7 and 8, 2015, provided input on the measure concept. The TEP agreed that hospice visits when death is imminent is an important concept to measure and supported data collection using the HIS. A second TEP was convened October 19 and 21, 2015, to provide input on the technical specifications of this quality measure pair. The TEP supported development of a measure set rather than a single measure, using different timeframes to measure the different types of care provided, and limiting the measures to patients receiving routine home care. The NQF MAP met on December 14th and 15th, 2015 and provided input to CMS. The MAP encouraged continued development of the Hospice Visits when Death is Imminent measure pair in the HQRP. More information about the MAP's recommendations for this measure is available at: *http://www.qualityforum.org/ProjectMaterials.aspx?projectID=75370.* While this measure is not currently NQF endorsed, we recognize that the NQF endorsement process is an important part of measure development and plan to submit this measure pair for NQF endorsement.

Form, Manner, and Timing of Data Collection and Submission. Data for this measure would be collected via the existing data collection mechanism, the HIS. We have proposed that 4 new items be added to the HIS-Discharge record to collect the necessary data elements for this measure. We expect that data collection for this quality measure via the 4 new HIS items would begin no earlier than April 1, 2017. Thus, under our current timelines, hospice providers would begin data collection for this measure for patient admissions and discharges occurring after April 1, 2017. Prior to the release of the new HIS data items, we will provide education and training to hospice providers to ensure all providers have adequate information and guidance to collect and submit data on this measure to CMS.

Since the data collection mechanism is the HIS, providers would collect and submit data using the same processes that are outlined in sections III.E.7c through III.E.7e of this proposed rule. In those sections, we specify that data for the measure would be submitted to the Quality Improvement and Evaluation System (QIES) Assessment Submission and Processing (ASAP) system, in compliance with the timeliness criterion and threshold set out.

For more information on the specifications and data elements for the measure set, Hospice Visits when Death is Imminent, we refer readers to the HQRP Specifications for the Hospice Item Set-based Quality Measures document, available on the "Current Measures" portion of the CMS HQRP Web site: *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/Current-Measures.html.* In addition, to facilitate the reporting of HIS data as it relates to the implementation of the new measure, we submitted a request for approval to OMB for the Hospice Item Set version 2.00.0 under the Paperwork Reduction Act (PRA) process. The new HIS data items that would collect this measure data are also available for public viewing in the PRA package available at: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

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[13] National Quality Forum. *A National Framework and Preferred Practices for Palliative and Hospice Care Quality.* 2006; Available from: *http://www.qualityforum.org/publications/2006/12/A_National_Framework_and_Preferred_Practices_for_Palliative_and_Hospice_Care_Quality.aspx.*

[14] National Consensus Project, *Clinical Practice Guidelines for Quality Palliative Care. 3rd edition.* 2013, National Consensus Project: Pittsburgh, PA.

[15] Qaseem, A., et al., *Evidence-Based Interventions to Improve the Palliative Care of Pain, Dyspnea, and Depression at the End of Life: A Clinical Practice Guideline from the American College of Physicians.* Annals of Internal Medicine, 2008. 148(2): p. 141–146.

[16] Werner, R., E. Stuart, and D. Polsky, *Public reporting drove quality gains at nursing homes.* Health Affairs, 2010. 29(9): p. 1706–1713.

[17] Plotzke, M., et al., *Medicare Hospice Payment Reform: Analyses to Support Payment Reform.* May 2014, Abt Associates Inc. Prepared for Centers for Medicare and Medicaid Services: Cambridge, MA.

We invite public comment on our proposal to implement the Hospice Visits when Death is Imminent measure pair beginning April 1, 2017, as previously

(2) Proposed Quality Measure 2: Hospice and Palliative Care Composite Process Measure—Comprehensive Assessment at Admission

Measure Background. The Hospice and Palliative Care Composite Process Measure—Comprehensive Assessment at Admission is a composite measure that assesses whether a comprehensive patient assessment is completed at hospice admission by evaluating the number of individual care processes completed upon admission for each hospice patient stay. A composite measure, as defined by the NQF, is a combination of 2 or more component measures, each of which individually reflects quality of care, into a single performance measure with a single score.[18] For more information on composite measure definitions, guiding principles, and measure evaluation criteria, we refer readers to the NQF Composite Performance Measure Evaluation Guidance Publication available at: *https://www.qualityforum.org/Publications/2013/04/Composite_Performance_Measure_Evaluation_Guidance.aspx.* A total of 7 individual care processes will be captured in this composite measure, which include the 6 NQF-endorsed quality measures and 1 modified NQF-endorsed quality measure currently implemented in the HQRP. Thus, the Hospice and Palliative Care Composite Process quality measure will use the current HQRP quality measures as its components. These individual component measures address care processes around hospice admission that are clinically recommended or required in the hospice CoPs.[19] This measure calculates the percentage of patients who received all care processes at admission. To calculate this measure, the individual component of the composite measure are assessed separately for each patient and then aggregated into one score for each hospice.

Measure Importance. This composite quality measure for comprehensive assessment at admission addresses high priority aspects of quality hospice care as identified by both leading hospice stakeholders and beneficiaries receiving hospice services. The NCP for Quality Palliative Care Clinical Practice Guidelines for Quality Palliative Care established 8 core palliative care domains, and this composite measure captures 4 of those domains.[20] The 4 domains captured by this composite measure are: The Structure and Process of Care Domain; the Physical Aspects of Care Domain; the Spiritual, Religious, and Existential Aspects of Care Domain, and the Ethical and Legal Aspects of Care Domain. The NCP guidelines placed equal weight on both the physical and psychosocial domains, emphasizing a comprehensive approach to patient care. For more information on the NCP domains for palliative care, refer to: *http://www.nationalconsensusproject.org/guidelines_download2.aspx.* In addition, the Medicare Hospice CoPs require that hospice comprehensive assessments identify patients' physical, psychosocial, emotional, and spiritual needs, and address them to promote the hospice patient's comfort throughout the end-of-life process. Furthermore, the person-centered, family, and caregiver perspective align with the domains identified by the CoPs and NCP, as patients and their families/caregiver also place value on physical symptom management and spiritual/psychosocial care as important factors at the end of life.[21] [22] A composite measure serves to ensure all hospice patients receive a comprehensive assessment for both physical and psychosocial needs at admission.

Measure Impact. The literature indicates that health care providers' practice is responsive to quality measures reported.[23] We believe this research, while not specific to hospices, reasonably predicts the effect of measures on hospice provider behavior. Collecting information about the total number of care processes conducted for each patient will incentivize hospices to conduct all desirable care processes for each patient and provide services that will address their care needs and improve quality during the time he/she is receiving hospice care. Additionally, creating a composite quality measure for comprehensive assessment at admission will provide consumers and providers with a single measure regarding the overall quality and completeness of assessment of patient needs at hospice admission, which can then be used to meaningfully and easily compare quality across hospice providers and increase transparency.

Performance Gap. Analyses conducted by our measure development contractor, RTI International, show that hospice performance scores on the current 7 HQRP measures are high (a score of 90 percent or higher) however, these analyses also revealed that, on average, only 68.1 percent of patient stays in a hospice had documentation that all of these desirable care processes were done at admission. Thus, by assessing hospices' performance of comprehensive assessment, the composite measure sets a higher standard of care for hospices and reveals a larger performance gap. A similar effect has been shown in the literature where facilities are achieving more than 90 percent compliance with individual measures, but compliance numbers decrease when multiple measures are combined as one.[24] [25] The performance gap identified by the composite measure creates opportunities for quality improvement and may motivate providers to conduct a greater number of high priority care processes for as many patients as possible upon admission to hospice.

Existing Measures. The Family Evaluation of Hospice Care (FEHC), NQF #0208, is a precursor of the Hospice CAHPS®. The surveys cover some similar domains. However, a major difference between them is the detailed requirements for survey administration of the CAHPS® Hospice Survey, which allow for comparison of hospice programs, The Hospice CAHPS® survey quality measure is not yet endorsed by NQF. We have recently submitted the CAHPS® Hospice Survey (experience of care) measure (NQF #2651) to be considered for endorsement under the Palliative and End-of-Life Care Project 2015–2016. For more information regarding this project and the measure submitted, we refer readers to *https://www.qualityforum.org/ProjectMeasures.aspx?projectID=80663.* In addition, we refer readers to section III.E.9 of this proposed rule for more information on the Hospice CAHPS® survey and associated quality measures. The CAHPS®-based quality measures submitted to NQF include patient and caregiver experience of care outcome measures, and our plan to propose these measures as part of the HQRP measure set in future rulemaking cycles. A key difference between the FEHC, Hospice CAHPS® and the Hospice and Palliative Care Composite Process Measure is that the FEHC and Hospice CAHPS® focus on the consumer's perspective of their health agency and experience, whereas the Hospice and Palliative Care Composite Process Measure focuses on the clinical care processes that are actually delivered by the hospice to each patient.

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[18] National Quality Forum. (2013). Composite Performance Measure Evaluation Guidance: National Quality Forum.

[19] Medicare and Medicaid Programs: Hospice Conditions of Participation, Part 418 subpart 54. Centers for Medicare and Medicaid Services, June 5, 2008.

[20] The National Consensus Project for Quality Palliative Care Clinical Practice Guidelines for Quality Palliative Care 3rd edition 2013.

[21] Singer PA, Martin DK, Kelner M. Quality End-of-Life Care: Patients' Perspectives. JAMA. 1999;281(2):163–168. doi:10.1001/jama.281.2.163.

[22] Steinhauser KE, Christakis NA, Clipp EC, McNeilly M, McIntyre L, Tulsky JA. Factors Considered Important at the End of Life by Patients, Family, Physicians, and Other Care Providers. JAMA. 2000;284(19):2476–2482. doi:10.1001/jama.284.19.2476.

[23] Werner, R., E. Stuart, and D. Polsky, *Public reporting drove quality gains at nursing homes.* Health Affairs, 2010. 29(9): p. 1706–1713.

[24] Nolan, T., & Berwick, D. M. (2006). All-or-none measurement raises the bar on performance. JAMA [H.W. Wilson—GS], 295(10), 1168.

[25] Agency for Healthcare Research and Quality. (2004). National Healthcare Quality Report.

Stakeholder Support. A TEP convened by our measure development contractor, RTI International, on December 2, 2015, provided input on this measure concept. The TEP unanimously agreed that a comprehensive hospice composite measure is an important measure and supported data collection using the HIS. The NQF MAP met on December 14th and 15th, 2015 and provided input to CMS. In their final recommendation, the MAP encouraged continued development of the Hospice and Palliative Care Composite Process Measure—Comprehensive Assessment at Admission measure. More information about the MAP's recommendations for this measure is available at: *http://www.qualityforum.org/ProjectMaterials.aspx?projectID=75370.*

While this measure is not currently NQF-endorsed, we recognize that the NQF endorsement process is an important part of measure development and plan to submit this measure for NQF endorsement. As noted, this quality measure will fill a gap by holding hospices to a higher standard of care and will motivate providers to conduct a greater number of high priority care processes for as many beneficiaries as possible upon admission as hospice patients. Furthermore, no current NQF-endorsed measures address the completion of a comprehensive care assessment at hospice admission.

Form, Manner, and Timing of Data Collection and Submission. The data source for this measure will be currently implemented HIS items that are currently used in the calculation of the 7 component measures. These items and quality measure algorithms for the 7 component measures can be found in the HQRP Specifications for the Hospice Item Set-based Quality Measures document, which is available in the "Downloads" section of the "Current Measures" portion of the CMS HQRP Web site: *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/Current-Measures.html.* Since the proposed measure is a composite measure whose components are currently adopted HQRP measures, no new data collection will be required; data for the composite measure will come from existing items from the existing 7 HQRP component measures. We propose to begin calculating this measure using existing data items, beginning April 1, 2017; this means patient admissions occurring after April 1, 2017 would be included in the composite measure calculation.

Since the composite measure components are existing HIS data items, providers are already collecting the data needed to calculate the composite measure. Data collection will continue in accordance with processes outlined in sections III.E.7c through III.E.7e of this proposed rule.

For more information on the specifications and data elements for the measure, Hospice and Palliative Care Composite Process Measure-Comprehensive Assessment at Admission, we refer readers to the *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/Current-Measures.html* document, available on the "Current Measures" portion of the CMS HQRP Web site: *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/Current-Measures.html.*

We invite public comment on our proposal to implement the Hospice and Palliative Care Composite Process Measure—Comprehensive Assessment at Admission beginning April 1, 2017, as previously described for the HQRP.

TABLE 16—PROPOSED QUALITY MEASURES AND DATA COLLECTION PERIOD AFFECTING THE FY 2019 PAYMENT DETERMINATION AND SUBSEQUENT YEARS

Quality measure	NQF ID No.	Type	Submission method	Data collection to begin
Hospice Visits when Death is Imminent	TBD	Process Measure	Hospice Item Set	04/01/2017
Hospice and Palliative Care Composite Process Measure.	TBD			

7. Form, Manner, and Timing of Quality Data Submission

a. Background

Section 1814(i)(5)(C) of the Act requires that each hospice submit data to the Secretary on quality measures specified by the Secretary. Such data must be submitted in a form and manner, and at a time specified by the Secretary. Section 1814(i)(5)(A)(i) of the Act requires that beginning with the FY 2014 and for each subsequent FY, the Secretary shall reduce the market basket update by 2 percentage points for any hospice that does not comply with the quality data submission requirements for that FY.

b. Previously Finalized Policy for New Facilities To Begin Submitting Quality Data

In the FY 2015 Hospice Wage Index final rule (79 FR 50488), we finalized a policy stating that any hospice that receives its CMS Certification Number (CCN) (also known as the Medicare Provider Number) notification letter dated on or after November 1 of the preceding year involved is excluded from any payment penalty for quality reporting purposes for the following FY. This requirement was codified at § 418.312.

In the FY 2016 Hospice Wage Index final rule (80 FR 47189), we further clarified and finalized our policy for the timing of new providers to begin reporting data to CMS. The clarified policy finalized in the FY 2016 Hospice Wage Index final rule (80 FR 47189) distinguished between when new hospice providers are required to begin submitting HIS data and when providers will be subject to the potential 2 percentage point annual payment update (APU) reduction for failure to comply with HQRP requirements. In summary, the policy finalized in the FY 2016 Hospice Wage Index final rule (80 FR 47189 through 47190) clarified that providers must begin *submitting* HIS data on the date listed in the letterhead of the CCN Notification letter received from us, but will be subject to the APU reduction based on whether the CCN Notification letter was dated before or after November 1st of the reporting year involved. Thus, beginning with the FY 2018 payment determination and for each subsequent payment determination, we finalized our policy that a new hospice be responsible for HQRP quality data submission beginning on the date of the CCN notification letter; we retained our prior policy that hospices not be subject to the APU reduction if the CCN notification letter was dated after November 1st of the year involved. For example, if a provider receives their CCN notification letter and the date in the letterhead is November 5, 2016, that provider will begin submitting HIS data for patient admissions occurring after November 5, 2016. However, since the CCN notification letter was dated after November 1st, they would not be evaluated for, or subject to any payment penalties for the relevant FY APU update (which in this instance is the FY 2018 APU, which is associated with patient admissions occurring January 1, 2016 through December 31, 2016.

This policy allows us to receive HIS data on all patient admissions on or after the date that a hospice receives its CCN notification letter, while at the same time allowing hospices flexibility and time to establish the necessary accounts for data submission, before they are subject to the potential APU reduction for a given reporting year. Currently, new hospices may experience a lag between Medicare certification and receipt of their actual CCN Number. Since hospices cannot submit data to the QIES ASAP system without a valid CCN Number, we proposed that new hospices begin collecting HIS quality data beginning on the date noted on the CCN notification letter. We believe this policy will provide sufficient time for new hospices to establish appropriate collection and reporting mechanisms to submit the required quality data to CMS. Requiring quality data reporting beginning on the date listed in the letterhead of the CCN notification letter aligns CMS policy for requirements for new providers with the functionality of the HIS data submission system (QIES ASAP).

c. Previously Finalized Data Submission Mechanism, Collection Timelines, and Submission Deadlines for the FY 2017 Payment Determination

In the FY 2015 Hospice Wage Index final rule (79 FR 50486), we finalized our policy requiring that, for the FY 2017 reporting requirements, hospices must complete and submit HIS records for all patient admissions to hospice after July 1, 2014. For each HQRP program year, we require that hospices submit data on each of the adopted measures in accordance with the reporting requirements specified in sections III.E.7c through III.E.7e of that FY 2015 Hospice Wage Index final rule for the designated reporting period. This requirement applies to previously finalized and adopted measures, as well as new measures proposed through the rulemaking process. Electronic submission is required for all HIS records. Although electronic submission of HIS records is required, hospices do not need to have an electronic medical record to complete or submit HIS data. In the FY 2014 Hospice Wage Index final rule (78 FR 48258), we finalized that to complete HIS records, providers can use either the Hospice Abstraction Reporting Tool (HART) software, which is free to download and use, or vendor-designed software. HART provides an alternative option for hospice providers to collect and maintain facility, patient, and HIS Record information for subsequent submission to the QIES ASAP system. Once HIS records are complete, electronic HIS files must be submitted to CMS via the QIES ASAP system. Electronic data submission via the QIES ASAP system is required for all HIS submissions; there are no other data submission methods available. Hospices have 30 days from a patient admission or discharge to submit the appropriate HIS record for that patient through the QIES ASAP system. We will continue to make HIS completion and submission software available to hospices at no cost. We provided details on data collection and submission timing under the downloads section of the HIS Web site on the CMS.gov Web site at *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/Hospice-Item-Set-HIS.html.*

The QIES ASAP system provides reports upon successful submission and processing of the HIS records. The final validation report may serve as evidence of submission. This is the same data submission system used by nursing homes, inpatient rehabilitation facilities, home health agencies, and long-term care hospitals for the submission of Minimum Data Set Version 3.0 (MDS 3.0), Inpatient Rehabilitation Facility-patient assessment instrument (IRF–PAI), Outcome Assessment Information Set (OASIS), and Long-Term Care Hospital Continuity Assessment Record and Evaluation Data Set (LTCH CARE), respectively. We have provided hospices with information and details about use of the HIS through postings on the HQRP Web site, Open Door Forums, announcements in the CMS MLN Connects Provider e-News (E-News), and provider training.

d. Previously Finalized Data Submission Timelines and Requirements for FY 2018 Payment Determination and Subsequent Years

Hospices are evaluated for purposes of the quality reporting program based on whether or not they submit data, not on their substantive performance level for the required quality measures. In order for us to appropriately evaluate the quality reporting data received by hospice providers, it is essential HIS data be received in a timely manner.

The submission date for any given HIS record is defined as the date on which a provider submits the completed record. The submission date is the date on which the completed record is submitted and accepted by the QIES ASAP system. In the FY 2016 Hospice Wage Index final rule (80 FR 47191) we finalized our policy that beginning with the FY 2018 payment determination hospices must submit all HIS records within 30 days of the Event Date, which is the patient's admission date for HIS-Admission records or discharge date for HIS-Discharge records.

- For HIS-Admission records, the submission date must be no later than the admission date plus 30 calendar days. The submission date can be equal to the admission date, or no greater than 30 days later. The QIES ASAP system will issue a warning on the Final Validation Report if the submission date is more than 30 days after the patient's admission date.
- For HIS-Discharge records, the submission date must be no later than the discharge date plus 30 calendar days. The submission date can be equal to the discharge date, or no greater than 30 days later. The QIES ASAP system will issue a warning on the Final Validation Report if the submission date is more than 30 days after the patient's discharge date.

The QIES ASAP system validation edits are designed to monitor the timeliness and ensure that providers' submitted records conform to the HIS data submission specifications. Providers are notified when timing criteria have not been met by warnings that appear on their Final Validation Reports. A standardized data collection approach that coincides with timely submission of data is essential to establish a robust quality reporting program and ensure the scientific reliability of the data received.

In the FY 2016 Hospice Wage Index final rule (80 FR 47191), we clarified the difference between the completion deadlines and the submission deadlines. Current sub-regulatory guidance produced by CMS (for example, HIS Manual, HIS trainings) states that the completion deadlines for HIS records are 14 days from the Event Date for HIS-Admission records and 7 days from the Event Date for HIS-Discharge records. Completion deadlines continue to reflect CMS guidance only; these guidelines are not statutorily specified and are not designated through regulation. These guidelines are intended to offer clear direction to hospice agencies in regards to the timely completion of HIS-Admission and HIS-Discharge records. The completion deadlines define only the latest possible date on which a hospice *should* complete each HIS record. This guidance is meant to better align HIS completion processes with clinical workflow processes; however, hospices may develop alternative internal policies to complete HIS records. Although it is at the discretion of the hospice to develop internal policies for completing HIS records, we continue to recommend that providers complete and attempt to submit HIS records early, prior to the previously finalized submission deadline of 30 days, beginning in FY 2018. Completing and attempting to submit records early allows providers ample time to address any technical issues encountered in the QIES ASAP submission process, such as correcting fatal error messages. Completing and attempting to submit records early will ensure that providers are able to comply with the 30 day submission deadline. HQRP guidance documents, including the CMS HQRP Web site, HIS Manual, HIS trainings, Frequently Asked Questions (FAQs), and Fact Sheets continue to offer the most up-to-date CMS guidance to assist providers in the successful completion and submission of HIS records. Availability of updated guidance will be communicated to providers through the usual CMS HQRP communication channels, including postings and announcements on the CMS HQRP Web site, MLN eNews communications, National provider association calls, and announcements on Open Door Forums and Special Open Door Forums.

e. Previously Finalized HQRP Data Submission and Compliance Thresholds for the FY 2018 Payment Determination and Subsequent Years

To accurately analyze quality reporting data received by hospice providers, it is imperative we receive ongoing and timely submission of all HIS-Admission and HIS-Discharge records. In the FY 2016 Hospice Wage Index final rule (80 FR 47192), we finalized the timeliness criteria for submission of HIS-Admission and HIS-Discharge records in response to input from our stakeholders seeking additional specificity related to HQRP compliance affecting FY payment determinations and, due to the importance of ensuring the integrity of quality data submitted.

Last year, we finalized our policy (80 FR 47191 through 47192) that beginning with the FY 2018 payment determination and subsequent FY payment determinations, all HIS records would have to be submitted within 30 days of the event date, which is the patient's admission date or discharge date. In conjunction with this requirement, we also finalized our policy (80 FR 47192) to establish an incremental threshold for compliance over a 3 year period. To be compliant for the FY 2018 APU determination, hospices must submit no less than 70 percent of their total number of HIS-Admission and HIS-Discharge records by no later than 30 days from the event date. The timeliness threshold is set at 80 percent for the FY 2019 APU determination and at 90 percent for the FY 2020 APU determination and subsequent years. The threshold corresponds with the overall amount of HIS records received from each provider that fall within the established 30 day submission timeframes. Our ultimate goal is to require all hospices to achieve a compliance rate of 90 percent or more.

To summarize, in the FY 2016 Hospice Wage Index final rule (80 FR 47193), we finalized our policy to implement the timeliness threshold requirement beginning with all HIS admission and discharge records that occur after January 1, 2016, in accordance with the following schedule.

- Beginning January 1, 2016 to December 31, 2016, hospices must submit at least 70 percent of all required HIS records within the 30 day submission timeframe for the year or be subject to a 2 percentage point reduction to their market basket update for FY 2018.
- Beginning January 1, 2017 to December 31, 2017, hospices must submit at least 80 percent of all required HIS records within the 30 day submission timeframe for the year or be subject to a 2 percentage point reduction to their market basket update for FY 2019.
- Beginning January 1, 2018 to December 31, 2018, hospices must submit at least 90 percent of all required HIS records within the 30 day submission timeframe for the year or be subject to a 2 percentage point reduction to their market basket update for FY 2020.

Timely submission of data is necessary to accurately analyze quality measure data received by providers. To support the feasibility of a hospice to achieve the compliance thresholds, CMS's measure development contractor conducted some preliminary analysis of Quarter 3 and Quarter 4 HIS data from 2014. According to this analysis, the vast majority of hospices (92 percent) would have met the compliance thresholds at 70 percent. Moreover, 88 percent and 78 percent of hospices would have met the compliance thresholds at 80 percent and 90 percent, respectively. We believe this analysis is further evidence that the compliance thresholds are reasonable and achievable by hospice providers.

The current reports available to providers in the Certification and Survey Provider Enhanced Reports (CASPER) system do allow providers to track the number of HIS records that are submitted within the 30 day submission timeframe. Currently, submitting an HIS record past the 30 day submission timeframe results in a non-fatal (warning) error. In April 2015, we made available 3 new Hospice Reports in CASPER, which include reports that can list HIS Record Errors by Field by Provider and HIS records with a specific error number. We are working on expanding this functionality of CASPER reports to include a timeliness compliance threshold report that providers could run to determine their preliminary compliance with the timeliness compliance requirement. We expect these reports to be available by late spring/early summer of 2016.

In the FY 2016 Hospice Wage Index final rule (80 FR 47192 through 47193), we provided clarification regarding the methodology used in calculating the 70 percent/80 percent/90 percent compliance thresholds. In general, HIS records submitted for patient admissions and discharges occurring during the reporting period (January 1st to December 31st of the reporting year involved) will be included in the denominator for the compliance threshold calculation. The numerator of the compliance threshold calculation would include any records from the denominator that were submitted within the 30 day submission deadline. In the FY 2016 Hospice Wage Index final rule (80 FR 47192), we stated that we would make allowances in the calculation methodology for two (2) circumstances. First, the calculation methodology will be adjusted following the applicable reporting period for records for which a hospice is granted an extension or exemption by CMS. Second, adjustments will be made for instances of modification/inactivation requests (Item A0050. Type of Record = 2 or 3). Additional helpful resources regarding the timeliness compliance threshold for HIS submissions can be found under the downloads section of the Hospice Item Set Web site at CMS.gov at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/Hospice-Item-Set-HIS.html.* Lastly, as further details of the data submission and compliance threshold are determined by CMS, we anticipate communicating these details through the regular CMS HQRP communication channels, including postings and announcements on the CMS HQRP Web site, MLN eNews communications, National provider association calls, and announcements on Open Door Forums and Special Open Door Forums.

f. New Data Collection and Submission Mechanisms Under Consideration for Future Years

We have made great progress in implementing the objectives set forth in the quality reporting and data collection activities required by Sections 3004 and 3132 of the Affordable Care Act. To date, we have established the HQRP, which includes 7 NQF-endorsed quality measures that are collected via the HIS. As stated in this rule, data on these measures are expected to be publicly reported sometime in 2017. Additionally, we have implemented the Hospice CAHPS® as part of the HQRP to gather important input on patient experience of care in hospice. Over the past several years, we have conducted data collection and analysis on hospice utilization and trends to help reform the hospice payment system. In the FY 2016 Hospice Wage Index final rule, we finalized payment reform measures, including changes to the RHC payment rate and the implementation of a Service Intensity Add-On (SIA) payment, effective January 1, 2016. As part of payment reform and ongoing program integrity efforts, we will continue ongoing monitoring of utilization trends for any future refinements.

To facilitate continued progress towards the requirements set forth in both sections 3004 and 3132 of the Affordable Care Act, we are considering developing a new data collection mechanism for use by hospices. This new data collection mechanism would be a hospice patient assessment instrument, which would serve 2 primary objectives concordant with the Affordable Care Act legislation: (1) To provide the quality data necessary for HQRP requirements and the current function of the HIS; and (2) provide additional clinical data that could inform future payment refinements.

We believe that the development of a hospice patient assessment tool could offer several benefits over the current mechanisms of data collection for quality and payment purposes, which include the submission of HIS data and the submission of claims data. For future payment refinements, a hospice patient assessment tool would allow us to gather more detailed clinical information, beyond the patient diagnosis and comorbidities that are currently reported on hospice claims. As stated in the FY 2016 Hospice Wage Index final rule (80 FR 47203), detailed patient characteristics are necessary to determine whether a case mix payment system could be achieved. A hospice patient assessment tool would allow us to capture information on symptom burden, functional status, and patient, family, and caregiver preferences, all of which will inform future payment refinements.

While systematic assessment is vital throughout the continuum of care, including palliative and end-of-life care, documentation confirming completion of systematic assessment in hospice settings is often inadequate or absent.[26] The value of the introduction of structured approaches via a clinical assessment is well established, as it enables a more comprehensive and consistent way of identifying and meeting patient needs.[27]

Moreover, symptoms are the leading reason that people seek medical care in the first place and frequently serve as the basis for establishing a diagnosis. Measures of physical function and disease burden have been used to identify older adults at high-risk for excess health care utilization, disability, or mortality.[28] Currently, data collected on claims includes line-item visits by discipline, General Inpatient Care (GIP) visit reporting to hospice patients in skilled nursing facilities or hospitals, post-mortem visits, injectable and non-injectable drugs and infusion pumps. Industry representatives have communicated to us that required claims information is not sufficiently comprehensive to accurately reflect the provision and the cost of hospice care.

For quality data collection, a hospice patient assessment instrument would support the goals of the HQRP as new quality measures are developed and adopted. Since the current quality data collection tool (HIS) is a chart abstraction tool, not a hospice patient assessment instrument, we are limited in the types of data that can be collected via the HIS. Instead of retrospective data collection elements, a hospice patient assessment tool would include data elements designed to be collected concurrent with provision of care. As such, we believe a hospice patient assessment tool would allow for more robust data collection that could inform development of new quality measures that are meaningful to hospice patients, their families and caregivers, and other stakeholders.

Finally, a hospice patient assessment tool that provides clinical data that is used for both payment and quality purposes would align the hospice benefit with other care settings that use similar approaches, such as nursing homes, inpatient rehabilitation facilities, and home health agencies which submit data via the MDS 3.0, IRF–PAI, and OASIS, respectively.

We envision the hospice patient assessment tool itself as an expanded HIS. The hospice patient assessment tool would include current HIS items, as well as additional clinical items that could be used for payment refinement purposes or to develop new quality measures. The hospice patient assessment tool would not replace existing requirements set forth in the Medicare Hospice CoPs (such as the initial nursing and comprehensive assessment), but would be designed to complement data that are collected as part of normal clinical care. If such a patient assessment were adopted, the new data collection effort would replace the current HIS, but would not replace other HQRP data collection efforts (that is, the Hospice CAHPS® survey), nor would it replace regular submission of claims data. We envision that patient assessment data would be collected upon a patient's admission to and discharge from any Medicare-certified hospice provider; additional interim data collection efforts are also possible. If we develop and implement a hospice patient assessment tool, we would provide several training opportunities to ensure providers are able to comply with any new requirements.

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[26] McMillan, S., Small, B., & Haley, W. (2011). Improving Hospice Outcomes through Systematic Assessment: A Clinical Trial. *Cancer Nursing,* 34(2), 89–97.

[27] Bourbonnais, F.F., Perreault, A., & Bouvette, M. (2004). Introduction of a pain and symptom assessment tool in the clinical setting—lessons learned. *Journal of Nursing Management,* 12(3), 194–200.

[28] Sha, M., Callahan, C., Counsell, S., Westmoreland, G., Stump, T., Kroenke, K. (2005). Physical symptoms as a predictor of health care use and mortality among older adults. 118, 301–306.

We are not proposing a hospice patient assessment tool at this time; we are still in the early stages of development of an assessment tool to determine if it would be feasible to implement under the Medicare Hospice Benefit. In the development of such a hospice patient assessment tool, we will continue to receive stakeholder input from MedPAC and ongoing input from the provider community, Medicare beneficiaries, and technical experts. It is of the utmost importance to develop a hospice patient assessment tool that is scientifically rigorous and clinically appropriate, thus we believe that continued and transparent involvement of stakeholders is critical. Additionally, it is of the utmost importance to minimize data collection burden on providers; in the development of any hospice patient assessment tool, we will ensure that patient assessment data items are not duplicative or overly burdensome to providers, patients, caregivers, or their families.

We solicit comments on a potential hospice patient assessment tool that would collect both quality, clinical, and other data with the ability to be used to inform future payment refinement efforts.

8. HQRP Submission Exemption and Extension Requirements for the FY 2017 Payment Determination and Subsequent Years

In the FY 2015 Hospice Wage Index final rule (79 FR 50488), we finalized our proposal to allow hospices to request, and for us to grant exemptions/extensions for the reporting of required HIS quality data when there are extraordinary circumstances beyond the control of the provider. When an extension/exemption is granted, a hospice will not incur payment reduction penalties for failure to comply with the requirements of the HQRP. For the FY 2016 payment determination and subsequent payment determinations, a hospice may request an extension/exemption of the requirement to submit quality data for a specified time period. In the event that a hospice requests an extension/exemption for quality reporting purposes, the hospice would submit a written request to CMS. In general, exemptions and extensions will not be granted for hospice vendor issues, fatal error messages preventing record submission, or staff error.

In the event that a hospice seeks to request an exemptions or extension for quality reporting purposes, the hospice must request an exemption or extension within 30 days of the date that the extraordinary circumstances occurred by submitting the request to CMS via email to the HQRP mailbox at *HospiceQRPReconsiderations@cms.hhs.gov.* Exception or extension requests sent to CMS through any other channel will not be considered valid. The request for an exemption or extension must contain all of the finalized requirements as outlined on our Web site at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/Extensions-and-Exemption-Requests.html.*

If a hospice is granted an exemption or extension, timeframes for which an exemption or extension is granted will be applied to the new timeliness requirement so such hospices are not penalized. If a hospice is granted an exemption, we will not require that the hospice submit any quality data for a given period of time. By contrast, if we grant an extension to a hospice, the hospice will still remain responsible for submitting quality data collected during the timeframe in question, although we will specify a revised deadline by which the hospice must submit these quality data.

This process does not preclude us from granting extensions/exemptions to hospices that have not requested them when we determine that an extraordinary circumstance, such as an act of nature, affects an entire region or locale. We may grant an extension/exemption to a hospice if we determine that a systemic problem with our data collection systems directly affected the ability of the hospice to submit data. If we make the determination to grant an extension/exemption to hospices in a region or locale, we will communicate this decision through routine CMS HQRP communication channels, including postings and announcements on the CMS HQRP Web site, MLN eNews communications, National provider association calls, and announcements on Open Door Forums and Special Open Door Forums.

9. Hospice CAHPS® Participation Requirements for the 2019 APU and 2020 APU

National Implementation of the Hospice CAHPS® Survey started January 1, 2015 as stated in the FY 2015 Hospice Wage Index and Payment Rate Update final rule (79 FR 50452). The CAHPS® Hospice Survey is a component of CMS' Hospice Quality Reporting Program that emphasizes the experiences of hospice patients and their primary caregivers listed in the hospice patients' records. Readers who want more information are referred to our extensive discussion of the Hospice Experience of Care Survey in the Hospice Wage Index FY 2015 final rule for a description of the measurements involved and their relationship to the statutory requirement for hospice quality reporting (79 FR 50450 and 78 FR 48261).

a. Background and Description of the Survey

The CAHPS® Hospice Survey is the first national hospice experience of care survey that includes standard survey administration protocols that allow for fair comparisons across hospices. Consistent with many other CMS CAHPS® surveys that are publicly reported on CMS Web sites, we will publicly report hospice data when at least 12 months of data are available, so that valid comparisons can be made across hospice providers in the United States, in order to help patients, family, friends, and caregivers choose the right hospice program.

The goals of the CAHPS® Hospice Survey are to:

- Produce comparable data on hospice patients' and caregivers' perspectives of care that allow objective and meaningful comparisons between hospices on domains that are important to consumers.
- Create incentives for hospices to improve their quality of care through public reporting of survey results.
- Hold hospice care providers accountable by informing the public about the providers' quality of care.

Details regarding CAHPS® Hospice Survey national implementation, and survey administration as well as participation requirements, exemptions from the survey requirement, hospice patient and caregiver eligibility criteria, fielding schedules, sampling requirements, and the languages in which is questionnaire, are available on the CAHPS® Web site, *www.HospiceCAHPSsurvey.org* and in the Quality Assurance Guidelines (QAG) manual, which is also on the same site and is available for download. Measures from the survey will be submitted to the NQF for endorsement.

b. Participation Requirements To Meet Quality Reporting Requirements for the FY 2019 APU

To meet participation requirements for the FY 2019 APU, hospices must collect survey data on an ongoing monthly basis from January 2017 through December 2017 (inclusive). Data submission deadlines for the 2019 APU can be found in Table 17. The data must be submitted by the deadlines listed in Table 17 by the hospice's authorized approved CMS vendor.

Hospices provide lists of the patients who died under their care to form the sample for the Hospice CAHPS® Survey. We emphasize the importance of hospices providing complete and accurate information to their vendors in a timely manner. Hospices must contract with an approved Hospice CAHPS® Survey vendor to conduct the survey on their behalf. The hospice is responsible for making sure their vendor meets all data submission deadlines. Vendor failure to submit data on time will be the responsibility of the hospice.

TABLE 17—CAHPS® HOSPICE SURVEY DATA SUBMISSION DATES FY 2018 APU, FY 2019 APU, AND FY 2020 APU

Sample months (that is, month of death)[1]	Quarterly data submission deadlines[2]
FY 2018 APU	
January–March 2016 (Q1)	August 10, 2016.
April–June 2016 (Q2)	November 9, 2016.
July–September 2016 (Q3)	February 8, 2017.
October–December 2016 (Q4)	May 10, 2017.
FY 2019 APU	
January–March 2017 (Q1)	August 9, 2017.
April–June 2017 (Q2)	November 8, 2017.
July–September 2017 (Q3)	February 14, 2018.
October–December 2017 (Q4)	May 9, 2018.
FY 2020 APU	
January–March 2018 (Q1)	August 8, 2018.
April–June 2018 (Q2)	November 14, 2018.
July–September 2018 (Q3)	February 13, 2019.
October–December 2018 (Q4)	May 8, 2019.

[1] Data collection for each sample month initiates 2 months following the month of patient death (for example, in April for deaths occurring in January).

[2] Data submission deadlines are the second Wednesday of the submission months, which are August, November, February, and May.

[2] Data submission deadlines are the second Wednesday of the submission months, which are August, November, February, and May.

Hospices that have fewer than 50 survey-eligible decedents/caregivers in the period from January 1, 2016 through December 31, 2016 are exempt from CAHPS® Hospice Survey data collection and reporting requirements for the FY 2019 payment determination. To qualify, hospices must submit an exemption request form. This form will be available in first quarter 2017 on the CAHPS® Hospice Survey Web site *http://www.hospiceCAHPSsurvey.org.* Hospices that want to claim the size exemption are required to submit to CMS their total unique patient count for the period of January 1, 2016 through December 31, 2016. The due date for submitting the exemption request form for the FY 2019 APU is August 10, 2017.

We propose that hospices that received their CCN after January 1, 2017, are exempted from the FY 2019 APU Hospice CAHPS® requirements due to newness. This exemption will be determined by CMS. The exemption is for 1 year only.

c. Participation Requirements To Meet Quality Reporting Requirements for the FY 2020 APU

To meet participation requirements for the FY 2020 APU, hospices must collect survey data on an ongoing monthly basis from January 2018 through December 2018 (inclusive). Data submission deadlines for the 2020 APU can be found in Table 17. The data must be submitted by the deadlines in Table 17 by the hospice's authorized approved CMS vendor.

Hospices must contract with an approved Hospice CAHPS® survey vendor to conduct the survey on their behalf. The hospice is responsible for making sure their vendor meets all data submission deadlines. Vendor failure to submit data on time will be the responsibility of the hospice.

Hospices that have fewer than 50 survey-eligible decedents/caregivers in the period from January 1, 2017 through December 31, 2017 are exempt from CAHPS® Hospice Survey data collection and reporting requirements for the FY 2020 payment determination. To qualify, hospices must submit an exemption request form. This form will be available in first quarter 2018 on the CAHPS® Hospice Survey Web site *http://www.hospiceCAHPSsurvey.org.* Hospices that want to claim the size exemption are required to submit to CMS their total unique patient count for the period of January 1, 2017 through December 31, 2017. The due date for submitting the exemption request form for the FY 2020 APU is August 10, 2018.

We propose that hospices that received their CCN after January 1, 2018, are exempted from the FY 2020 APU Hospice CAHPS® requirements due to newness. This exemption will be determined by CMS. The exemption is for 1 year only.

d. Annual Payment Update

The Affordable Care Act requires that beginning with FY 2014 and each subsequent fiscal year, the Secretary shall reduce the market basket update by 2 percentage points for any hospice that does not comply with the quality data submission requirements for that fiscal year, unless covered by specific exemptions. Any such reduction will not be cumulative and will not be taken into account in computing the payment amount for subsequent fiscal years. In the FY 2015 Hospice Wage Index final rule, we added the CAHPS® Hospice Survey to the Hospice Quality Reporting Program requirements for the FY 2017 payment determination and determinations for subsequent years.

- To meet the HQRP requirements for the FY 2018 payment determination, hospices would collect survey data on a monthly basis for the months of January 1, 2016 through December 31, 2016 to qualify for the full APU.

- To meet the HQRP requirements for the FY 2019 payment determination, hospices would collect survey data on a monthly basis for the months of January 1, 2017 through December 31, 2017 to qualify for the full APU.
- To meet the HQRP requirements for the FY 2020 payment determination, hospices would collect survey data on a monthly basis for the months of January 1, 2018 through December 31, 2018 to qualify for the full APU.

e. Hospice CAHPS® Reconsiderations and Appeals Process

Hospices are required to monitor their respective Hospice CAHPS® Survey vendors to ensure that vendors submit their data on time. The hospice CAHPS® data warehouse provides reports to vendors and hospices, including reports on the status of their data submissions. Details about the reports and emails received after data submission should be referred to the Quality Assurance Guidelines Manual. If a hospice does not know how to retrieve their reports, or lacks access to the reports, they should contact Hospice CAHPS® Technical Assistance at *hospiceCAHPSsurvey@hcqis.org* or call them at 1–844 –472–4621. Additional information can be found on page 113 of the Hospice CAHPS® Quality Assurance Guidelines manual Version 2.0 which is available on the Hospice CAHPS® Web site, *www.hospicecahpssurvey.org.*

In the FY 2017 payment determination and subsequent years, reporting compliance is determined by successfully fulfilling both the Hospice CAHPS® Survey requirements and the HIS data submission requirements. Providers would use the same process for submitting a reconsideration request that are outlined in section III.C.10 of this proposed rule.

10. HQRP Reconsideration and Appeals Procedures for the FY 2017 Payment Determination and Subsequent Years

In the FY 2015 Hospice Wage Index final rule (79 FR 50496), we notified hospice providers on how to seek reconsideration if they received a noncompliance decision for the FY 2016 payment determination and subsequent years. A hospice may request reconsideration of a decision by CMS that the hospice has not met the requirements of the Hospice Quality Reporting Program for a particular period. For the FY 2017 payment determination and subsequent years, reporting compliance is determined by successfully fulfilling both the Hospice CAHPS® Survey requirements and the HIS data submission requirements.

We clarified that any hospice that wishes to submit a reconsideration request must do so by submitting an email to CMS containing all of the requirements listed on the HQRP Web site at *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/Reconsideration-Requests.html.* Electronic email sent to *HospiceQRPReconsiderations@cms.hhs.gov* is the only form of submission that will be accepted. Any reconsideration requests received through any other channel including the United States Postal Service or phone will not be considered as a valid reconsideration request. We codified this process at § 418.312(h). In addition, we codified at § 418.306(b)(2) that beginning with FY 2014 and each subsequent FY, the Secretary shall reduce the market basket update by 2 percentage points for any hospice that does not comply with the quality data submission requirements for that FY and solicited comments on all of the proposals and the associated regulations text at § 418.312 and in § 418.306. Official instructions regarding the payment reduction reconsideration process can be located under the Regulations and Guidance, Transmittals, 2015 Transmittals Web site at *https://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/2015-Transmittals-Items/R52QRI.html?DLPage=1&DLEntries=10&DLSort=4&DLSortDir=descending.*

In the past, only hospices found to be non-compliant with the reporting requirements set forth for a given payment determination received a notification from CMS of this finding along with instructions for requesting reconsideration in the form of a United States Postal Service (USPS) letter. In the FY 2016 Hospice Wage Index final rule (80 FR 47198), we proposed to use the QIES CASPER reporting system as an additional mechanism to communicate to hospices regarding their compliance with the reporting requirements for the given reporting cycle. We will implement this additional communication mechanism via the QIES CASPER timeliness compliance reports. As stated in section III.E.7e, of this proposed rule these QIES CASPER reports will be automated reports that hospices will be able to generate at any point in time to determine their *preliminary* compliance with HQRP requirements, specifically, the timeliness compliance threshold for the HIS. We believe the QIES CASPER timeliness compliance reports meet our intent of developing a method to communicate as quickly, efficiently, and broadly as possible with hospices regarding their *preliminary* compliance with reporting requirements. We will continue to send notification of noncompliance via delivery of a letter via the United States Postal Service. Requesting access to the CMS systems is performed in 2 steps. Details are provided on the QIES Technical Support Office Web site at *https://www.qtso.com/hospice.html.* Providers may access the CMS QIES Hospice Users Guides and Training on the QIES Technical Support Office Web site and selecting Hospice and then selecting the CASPER Reporting Users Guide at *https://www.qtso.com/hospicetrain.html.* Additional information about how to access the QIES CASPER reports will be provided prior to the availability of these new reports.

We proposed to disseminate communications regarding the availability of hospice compliance reports in CASPER files through CMS HQRP communication channels, including postings and announcements on the CMS HQRP Web site, MLN eNews communications, National provider association calls, and announcements on Open Door Forums and Special Open Door Forums. We further proposed to publish a list of hospices who successfully meet the reporting requirements for the applicable payment determination on the CMS HQRP Web site *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/index.html.* We proposed updating the list after reconsideration requests are processed on an annual basis. We clarified that the published list of compliant hospices on the CMS HQRP Web site would include limited organizational data, such as the name and location of the hospice. Finalizing the list of compliant providers for any given year is most appropriately done after the final determination of compliance is made. It is our intent for the published list of compliant hospices to be as complete and accurate as possible, giving recognition to all providers who were compliant with HQRP requirements for that year. Finalizing the list after requests for reconsideration are reviewed and a final determination of compliance is made allows for a more complete and accurate listing of compliant providers than developing any such list prior to reconsideration. Developing the list after the final determination of compliance has been made allows providers whose initial determination of noncompliance was reversed to be included in the list of compliant hospices for that year. We believe that finalizing the list of compliant hospices annually, after the reconsideration period will provide the most accurate listing of hospices compliant with HQRP requirements.

11. Public Display of Quality Measures and Other Hospice Data for the HQRP

Under section 1814(i)(5)(E) of the Act, the Secretary is required to establish procedures for making any quality data submitted by hospices available to the public. Such procedures shall ensure that a hospice program has the opportunity to review the data that is to be made public for the hospice program prior to such data being made public. The Secretary shall report quality measures that relate to hospice care provided by hospice programs on the CMS Web site.

We recognize that public reporting of quality data is a vital component of a robust quality reporting program and are fully committed to developing the necessary systems for transparent public reporting of hospice quality data. We also recognize that it is essential that the data made available to the public be meaningful and that comparing performance between hospices requires that measures be constructed from data collected in a standardized and uniform manner. Hospices have been required to use a standardized data collection approach (HIS) since July 1, 2014. Data from July 1, 2014 onward is currently being used to establish the scientific soundness of the quality measures prior to the onset of public reporting of the 7 quality measures implemented in the HQRP. We believe it is critical to establish the reliability and validity of the quality measures prior to public reporting to demonstrate the ability of the quality measures to distinguish the quality of services provided. To establish reliability and validity of the quality measures, at least 4 quarters of data will be analyzed. Typically, the first 1 or 2 quarters of data reflect the learning curve of the facilities as they adopt standardized data collection procedures; these data often are not used to establish reliability and validity. We began data collection in CY 2014; the data from CY 2014 for Quarter 3 (Q3) was not used for assessing validity and reliability of the quality measures. We analyzed data collected by hospices during Quarter 4 (Q4) CY 2014 and Q1–Q3 CY 2015. Preliminary analyses of HIS data show that all 7 quality measures that can be calculated using HIS data are eligible for public reporting (NQF #1634, NQF #1637, NQF #1639, NQF #1638, NQF #1641, modified NQF #1647, NQF #1617). Based on analyses conducted to establish reportability of the measures, 71 percent–90 percent of all hospices would be able to participate in public reporting, depending on the measure. For additional details regarding analysis, we refer readers to the Measure Testing Executive Summary document available on the "Current Measures" section of the CMS HQRP Web site: *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/Current-Measures.html.* Although analyses show that many hospices perform well on the 7 measures from the HIS measure set, the measures still show variation, especially among hospices with suboptimal performance, indicating that these measures are still meaningful for comparing quality of care across hospice providers. In addition to conducting quantitative analysis to establish scientific acceptability of the HIS measures, CMS's measure development contractor, RTI International, also conducted interviews with family and caregivers of hospice patients. The purpose of these interviews was to determine what information patients and caregivers would find useful in selecting hospices, as well as gathering input about patient and caregiver experience with hospice care. Results from these interviews indicate that all 7 HIS quality measures provide consumers with useful information. Interview participants stated that quality measure data would be especially helpful in identifying poor quality outliers that inform beneficiaries, families, caregivers, and other hospice stakeholders.

To inform which of the HIS measures are eligible for public reporting, CMS's measure development contractor, RTI International, examined the distribution of hospice-level denominator size for each quality measure to assess whether the denominator size is large enough to generate the statistically reliable scores necessary for public reporting. This goal of this analysis is to establish the minimum denominator size for public reporting, and is referred to as "reportability" analysis. Reportability analysis is necessary since small denominators may not yield statistically meaningful QM scores. Thus, for other quality reporting programs, such as Nursing Home Compare,[29] CMS sets a minimum denominator size for public reporting, as well as the data selection period necessary to generate the minimum denominator size. Reportability analysis showed that calculating and publicly displaying measures based on 12 months of data would allow for sufficient measure denominator size. Having ample denominator size ensures that quality measure scores that are publicly reported are reliable and stable; a minimum sample size of 20 stays is commonly applied to assessment-based quality measures in other reporting programs. The 12 month data selection period produced significantly larger mean and median sample sizes among hospices, which will generate more reliable quality measure scores. Additionally, our analysis revealed that when applying a minimum sample size of 20 stays, using rolling 12 months of data to create QMs would only exclude about 10 percent – 29 percent of hospices from public reporting, depending on the measure. For more information on analyses conducted to determine minimum denominator size and data selection period, we refer readers to the Reportability Analysis Section of the Measure Testing Executive Summary, available on the "Current Measures" portion of the CMS HQRP Web site: *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/Current-Measures.html.*

Based on reportability analysis and input from other stakeholders, we have determined that all 7 HIS measures are eligible for public reporting. Thus, we plan to publicly report all 7 HIS measures on a CMS Compare Web site for hospice agencies. For more details on each of the 7 measures, including information on measure background, justification, measure specifications, and measure calculation algorithms, we refer readers to the HQRP QM User's Manual v1.00 Final document, which is available on the downloads portion of the Hospice Item Set Web site, CMS HQRP Web site: *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/Current-Measures.html.* Individual scores for each of the 7 HIS measure scores would be reported on a new publicly available CMS Hospice Compare Web site. Current reportability analysis indicates that a minimum denominator size of 20 based on 12 rolling months of data would be sufficient for public reporting of all HIS quality measures. Under this methodology, hospices with a quality measure denominator size of smaller than 20 patient stays would not have the quality measure score publicly displayed since a quality measure score on the basis of small denominator size may not be reliable. We will continue to monitor quality measure performance and reportability and will adjust public reporting methodology in the future if needed.

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[29] "CMS Nursing Home Quality Initiative—Centers for Medicare* * *" 2011. 25 Jan. 2016, *https://www.cms.gov/nursinghomequalityinits/45_nhqimds30trainingmaterials.asp.*

Reportability analysis is typically conducted on a measure-by-measure basis. We would like to clarify that any new measure adopted as part of the HQRP will undergo reportability analysis to determine: (1) if the measure is eligible for public reporting; and (2) the data selection period and minimum denominator size for the measure. Results of reportability analyses conducted for new measures will be communicated through future rulemaking.

In addition, the Affordable Care Act requires that reporting be made public on a CMS Web site and that providers have an opportunity to review their data prior to public reporting. We are currently developing the infrastructure for public reporting, and will provide hospices an opportunity to review their quality measure data prior to publicly reporting information about the quality of care provided by Medicare-certified hospice agencies throughout the nation. These quality measure data reports or "preview reports" will be made available in the CASPER system prior to public reporting and will offer providers the opportunity to review their quality measure data prior to public reporting on the CMS Compare Web site for hospice agencies. Under this process, providers would have the opportunity to review and correct data they submit on all measures that are derived from the HIS. Reports would contain the provider's performance on each measure calculated based on HIS submission to the QIES ASAP system. The data from the HIS submissions would be populated into reports with all data that have been submitted by the provider. We will post preview reports with sufficient time for providers to be able to submit, review data, make corrections to the data, and view their data. Providers are encouraged to regularly evaluate their performance in an effort to ensure the most accurate information regarding their agency is reflected.

We also plan to make available additional provider-level feedback reports, which are separate from public reporting and will be for provider viewing only, for the purposes of internal provider quality improvement. As is common in other quality reporting programs, quality reports would contain feedback on facility-level performance on quality metrics, as well as benchmarks and thresholds. For the CY 2015 Reporting Cycle, several new quality reporting provider participation reports were made available in CASPER. Providers can access a detailed list and description of each of the 12 reports currently available to hospices on the QIES Web site, under the Training and Education Selections, CASPER Reporting Users Guide at *https://www.qtso.com/hospicetrain.html.* We anticipate that providers would use the quality reports as part of their Quality Assessment and Performance Improvement (QAPI) efforts.

Furthermore, to meet the requirement for making such data public, we are developing a CMS Hospice Compare Web site, which will provide valuable information regarding the quality of care provided by Medicare-certified hospice agencies throughout the nation. Consumers would be able to search for all Medicare approved hospice providers that serve their city or zip code (which would include the quality measures and CAHPS® Hospice Survey results) and then find the agencies offering the types of services they need, along with provider quality information. Based on the efforts necessary to build the infrastructure for public reporting, we anticipate that public reporting of the eligible HIS quality measures on the CMS Compare Web site for hospice agencies will begin sometime in the spring/summer of CY 2017. To help providers prepare for public reporting, we will offer opportunities for stakeholder engagement and education prior to the rollout of a Hospice Compare site. We will offer outreach opportunities for providers through the MLN eNews, Open Door Forums and Special Open Door Forums; we will also post additional educational materials regarding public reporting on the CMS HQRP Web site. Finally, we will offer training to all hospice providers on the systems and processes for reviewing their data prior to public reporting; availability of trainings will be communicated through the regular CMS HQRP communication channels, including postings and announcements on the CMS HQRP Web site, MLN eNews communications, National provider association calls, and announcements on Open Door Forums and Special Open Door Forums.

Like other CMS Compare Web sites, the Hospice Compare Web site will, in time, feature a quality rating system that gives each hospice a rating of between 1 and 5 stars. Hospices will have prepublication access to their own agency's quality data, which enables each agency to know how it is performing before public posting of data on the Hospice Compare Web site. Public comments regarding how the rating system would determine a hospice's star rating and the methods used for calculations, as well as a proposed timeline for implementation will be announced via regular CMS HQRP communication channels, including postings and announcements on the CMS HQRP Web site, MLN eNews communications, provider association calls, and announcements on Open Door Forums and Special Open Door Forums. We will announce the timeline for development and implementation of the star rating system in future rulemaking.

Lastly, as part of our ongoing efforts to make healthcare more transparent, affordable, and accountable for all hospice stakeholders, the HQRP is prepared to post hospice data on a public data set, the Data.Medicare.gov Web site, and directory located at *https://data.medicare.gov.* This site includes the official datasets used on the Medicare.gov Compare Web sites provided by CMS. In addition, this data will serve as a helpful resource regarding information on Medicare-certified hospice agencies throughout the nation. In an effort to move toward public reporting of hospice data, we will initially post demographic data of hospice agencies that have been registered with Medicare. This list will include addresses, phone numbers, and services provided for each agency. The timeline for posting hospice demographic data on a public dataset is scheduled for sometime late spring/summer CY 2016. Additional details regarding hospice datasets will be announced via regular CMS HQRP communication channels, including postings and announcements on the CMS HQRP Web site, MLN eNews communications, National provider association calls, and announcements on Open Door Forums and Special Open Door Forums. In addition, we will provide the applicable list of CASPER/ASPEN coordinators in the event the Medicare-certified agency is either not listed in the database or the characteristics/administrative data (name, address, phone number, services, or type of ownership) is incorrect or has changed. To continue to meet Medicare enrollment requirements, all Medicare providers are required to report changes to their information in their enrollment application as outlined in the Provider -Supplier Enrollment Fact Sheet Series located at *https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/*

downloads/MedEnroll_InstProv_Fact Sheet_ICN903783.pdf.

D. The Medicare Care Choices Model

The Medicare Care Choices Model (MCCM) offers a new option for Medicare beneficiaries with certain advanced diseases who meet the model's other eligibility criteria to receive hospice-like support services from MCCM participating hospices while receiving care from other Medicare providers for their terminal illness. This 5 year model is being tested to encourage greater and earlier use of the Medicare and Medicaid hospice benefit to determine whether it can improve the quality of life and care received by Medicare beneficiaries, increase beneficiary, family, and caregiver satisfaction, and reduce Medicare or Medicaid expenditures. Participation in the model will be limited to Medicare and dual eligible beneficiaries with advanced cancers, chronic obstructive pulmonary disease (COPD), congestive heart failure, and Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome who qualify for the Medicare or Medicaid hospice benefit and meet the eligibility requirements of the model. The model includes over 130 hospices from 39 states across the country and is projected to serve 100,000 beneficiaries by 2020. The first cohort of MCCM participating hospices began providing services under the model in January 2016, and the second cohort will begin to provide services under the model in January 2018. The last patient will be accepted into the model 6 months before the December 31, 2020 model end date.

For more information, see the MCCM Web site: ***https://innovation.cms.gov/initiatives/Medicare-Care-Choices/.***

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of the following information collection requirements (ICRs).

A. Proposed Information Collection Requirements

Section 1814(i)(5)(C) of the Act requires that each hospice submit data to the Secretary on quality measures specified by the Secretary. Such data must be submitted in a form and manner, and at a time specified by the Secretary. In the FY 2014 Hospice Wage Index final rule (78 FR 48257), and in compliance with section 1814(i)(5)(C) of the Act, we finalized the specific collection of data items that support the following six NQF endorsed measures and one modified measure for hospice:

- NQF #1617 Patients Treated with an Opioid who are Given a Bowel Regimen,
- NQF #1634 Pain Screening,
- NQF #1637 Pain Assessment,
- NQF #1638 Dyspnea Treatment,
- NQF #1639 Dyspnea Screening,
- NQF #1641 Treatment Preferences,
- NQF #1647 Beliefs/Values Addressed (if desired by the patient) (modified).

Data for the aforementioned 7 measures is collected via the HIS. Data collection for the 7 NQF-endorsed measures via the HIS V1.00.0 was approved by the Office of Management and Budget April 3, 2014 (OMB control number 0938–1153—Hospice Quality Reporting Program). As outlined in this proposed rule, we continue data collection for these 7 NQF-endorsed measures.

In this proposed rule, we propose the implementation of two new measures. The first measure is the Hospice and Palliative Care Composite Process Measure—Comprehensive Assessment at Admission. Seven individual care processes will be captured in this composite measure, which includes the six NQF-endorsed quality measures and one modified NQF-endorsed quality measure currently implemented in the HQRP. Thus, the Hospice and Palliative Care Composite Process quality measure will use the current HQRP quality measures as its components. The data source for this measure will be currently implemented HIS items that are currently used in the calculation of the seven component measures. Since the proposed measure is a composite measure created from components, which are currently adopted HQRP measures, no new data collection will be required; data for the composite measure will come from existing items from the existing seven HQRP component measures. We propose to begin calculating this measure using existing data items, beginning April 1, 2017; this means patient admissions occurring on or after April 1, 2017, would be included in the composite measure calculation.

The second measure is the Hospice Visits when Death is Imminent Measure Pair. Data for this measure would be collected via the existing data collection mechanism, the HIS. We proposed that four new items be added to the HIS-Discharge record to collect the necessary data elements for this measure. We expect that data collection for this quality measure via the four new HIS items would begin no earlier than April 1, 2017. Thus, under current CMS timelines, hospice providers would begin data collection for this measure for patient admissions and discharges occurring on or after April 1, 2017.

We proposed the HIS V2.00.0 to fulfill the data collection requirements for the 7 currently adopted NQF measures and the 2 new proposed measures. The HIS V2.00.0 contains:

- All items from the HIS V1.00.0, which are necessary to calculate the 7 adopted NQF measures (and thus the proposed composite measure), plus the HIS V1.00.0 administrative items necessary for patient identification and record matching
- One new item for measure refinement of the existing measure NQF #1637 Pain Assessment.
- New items to collect data for the Hospice Visits when Death is Imminent measure pair.
- New administrative items for patient record matching and future public reporting of hospice quality data.

Hospice providers will submit an HIS-Admission and an HIS-Discharge for each patient admission. Using HIS data for assessments submitted October 1, 2014 through September 30, 2015, we have estimated that there will be approximately 1,248,419 discharges across all hospices per year; therefore, we would expect that there should be 1,248,419 HIS (consisting of one admission and one discharge assessment per patient), submitted across all hospices yearly. Over a 3-year period, we expect 3,745,257 Hospice Item Sets across all hospices. There were 4,259 certified hospices in the United States as of January 2016;[30] we estimate that each individual hospice will submit on average 293 Hospice Item Sets annually, which is approximately 24 Hospice Items Sets per month or 879 Hospice Item Sets over three years.

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[30] Quality Improvement and Evaluation System (QIES) List of Hospice Providers, January 2016.

The HIS consists of an admission assessment and a discharge assessment. As noted above, we estimate that there will be 1,248,419 hospice admissions across all hospices per year. Therefore, we expect there to be 2,496,838 HIS assessment submissions (admission and discharge assessments counted separately) submitted across all hospices annually, which is 208,070 across all hospices monthly, or 7,490,514 across all hospices over 3 years. We further estimate that there will be 586 Hospice Item Set submissions by each hospice annually, which is approximately 49 submissions monthly or 1,759 submissions over 3 years.

For the Admission Hospice Item Set, we estimate that it will take 14 minutes of time by a clinician such as a Registered Nurse at an hourly wage of $67.10 [31] to abstract data for Admission Hospice Item Set. This would cost the facility approximately $15.66 for each admission assessment. We further estimate that it will take 5 minutes of time by clerical or administrative staff person such as a medical data entry clerk or medical secretary at an hourly wage of $32.24 [32] to upload the Hospice Item Set data into the CMS system. This would cost each facility approximately $2.69 per assessment. For the Discharge Hospice Item Set, we estimate that it will take 9 minutes of time by a clinician, such as a nurse at an hourly wage of $67.10 to abstract data for Discharge Hospice Item Set. This would cost the facility approximately $10.07. We further estimate that it will take 5 minutes of time by clerical or administrative staff, such as a medical data entry clerk or medical secretary at an hourly wage of $32.24 to upload data into the CMS system. This would cost each facility approximately $2.69. The estimated cost for each full Hospice Item Set submission (admission assessment and discharge assessment) is $31.10.

We estimate that the total nursing time required for completion of both the admission and discharge assessments is 23 minutes at a rate of $67.10 per hour. The cost across all Hospices for the nursing/clinical time required to complete both the admission and discharge Hospice Item sets is estimated to be $32,111,417 annually, or $96,334,252 over 3 years, and the cost to each individual Hospice is estimated to be $7,539.66 annually, or $22,618.98 over 3 years. The estimated time burden to hospices for a medical data entry clerk to complete the admission and discharge Hospice Item Set assessments is 10 minutes at a rate of $32.24 per hour. The cost for completion of the both the admission and discharge Hospice Item sets by a medical data entry clerk is estimated to be $6,708,171 across all Hospices annually, or $20,124,514 across all Hospices over 3 years, and $1,575.06 to each Hospice annually, or $4,725.17 to each Hospice over 3 years.

The total combined time burden for completion of the Admission and Discharge Hospice Item Sets is estimated to be 33 minutes. The total cost across all hospices is estimated to be $38,819,589 annually or $116,458,766 over 3 years. For each individual hospice, this cost is estimated to be $9,114.72 annually or $27,344.16 over 3 years. See Table 17 for breakdown of burden and cost by assessment form.

TABLE 17—SUMMARY OF BURDEN HOURS AND COSTS

Regulation section(s)	OMB control No.	Number of respondents	Number of responses	Burden per response (hours)	Total annual burden (hours)	Hourly labor cost of reporting ($)	Total cost ($)
Hospice Item Set Admission Assessment.	0938–1153	4,259	1,248,419 per year.	0.233 clinician hours; 0.083 clerical hours.	395,333	Clinician at $67.10 per hour; Clerical staff at $32.24 per hour.	$22,900,166
Hospice Item Set Discharge Assessment.	0938–1153	4,259	1,248,419 per year.	0.150 clinician hours; 0.083 clerical hours.	291,298	Clinician at $67.10 per hour; Clerical staff at $32.24 per hour.	15,919,423
3-year total	0938–1153	4,259	7,490,514	0.55 hours	2,059,891	Clinician at $67.10 per hour; Clerical staff at $32.24 per hour.	116,458,766

C. Submission of PRA-Related Comments

We have submitted a copy of this proposed rule to OMB for its review of the rule's information collection and recordkeeping requirements. These requirements are not effective until they have been approved by the OMB.

To obtain copies of the supporting statement and any related forms for the proposed collections discussed above, please visit CMS' Web site at *www.cms.hhs.gov/Paperwork@cms.hhs.gov,* or call the Reports Clearance Office at 410–786–1326.

We invite public comments on these potential information collection requirements. If you wish to comment, please submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule and identify the rule (CMS–1652–P) the ICR's CFR citation, CMS ID number, and OMB control number.

ICR-related comments are due June 27, 2016.

V. Economic Analyses

A. Regulatory Impact Analysis

1. Introduction

We have examined the impacts of this proposed rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA, March 22, 1995; Pub. L. 104–4), and the Congressional Review Act (5 U.S.C. 804(2)).

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[31] The adjusted hourly wage of $67.10 per hour for a Registered Nurse was obtained using the mean hourly wage from the U.S. Bureau of Labor Statistics, $33.55. This mean hourly wage is adjusted by a factor of 100 percent to include fringe benefits. See *http://www.bls.gov/oes/current/oes291141.htm.*

[32] The adjusted hourly wage of $32.24 per hour for a Medical Secretary was obtained using the mean hourly wage from the U.S. Bureau of Labor Statistics, $16.12. This mean hourly wage is adjusted by a factor of 100 percent to include fringe benefits. See *http://www.bls.gov/oes/current/oes436013.htm.*

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This proposed rule has been designated as economically significant under section 3(f)(1) of Executive Order 12866 and thus a major rule under the Congressional Review Act. Accordingly, we have prepared a regulatory impact analysis (RIA) that, to the best of our ability, presents the costs and benefits of the rulemaking. This proposed rule was also reviewed by OMB.

2. Statement of Need

This proposed rule meets the requirements of our regulations at § 418.306(c), which requires annual issuance, in the **Federal Register**, of the hospice wage index based on the most current available CMS hospital wage data, including any changes to the definitions of Core-Based Statistical Areas (CBSAs), or previously used Metropolitan Statistical Areas (MSAs). This proposed rule would also update payment rates for each of the categories of hospice care described in § 418.302(b) for FY 2017 as required under section 1814(i)(1)(C)(ii)(VII) of the Act. The payment rate updates are subject to changes in economy-wide productivity as specified in section 1886(b)(3)(B)(xi)(II) of the Act. In addition, the payment rate updates may be reduced by an additional 0.3 percentage point (although for FY 2014 to FY 2019, the potential 0.3 percentage point reduction is subject to suspension under conditions specified in section 1814(i)(1)(C)(v) of the Act). In 2010, the Congress amended section 1814(i)(6) of the Act with section 3132(a) of the Affordable Care Act. The amendment authorized the Secretary to revise the methodology for determining the payment rates for routine home care and other services included in hospice care, no earlier than October 1, 2013. In the FY 2016 Hospice Wage Index and Rate Update final rule (80 FR 47164), we finalized the creation of two different payment rates for RHC that resulted in a higher base payment rate for the first 60 days of hospice care and a reduced base payment rate for days 61 and over of hospice and created a SIA payment, in addition to the per diem rate for the RHC level of care, equal to the CHC hourly payment rate multiplied by the amount of direct patient care provided by an RN or social worker that occurs during the last 7 days of a beneficiary's life, if certain criteria are met. Finally, section 3004 of the Affordable Care Act amended the Act to authorize a quality reporting program for hospices and this rule discusses changes in the requirements for the hospice quality reporting program in accordance with section 1814(i)(5) of the Act.

3. Overall Impacts

We estimate that the aggregate impact of this proposed rule would be an increase of $330 million in payments to hospices, resulting from the hospice payment update percentage of 2.0 percent. The impact analysis of this proposed rule represents the projected effects of the changes in hospice payments from FY 2016 to FY 2017. Using the most recent data available at the time of rulemaking, in this case FY 2015 hospice claims data, we apply the current FY 2016 wage index and labor-related share values to the level of care per diem payments and SIA payments for each day of hospice care to simulate FY 2016 payments. Then, using the same FY 2015 data, we apply the proposed FY 2017 wage index and labor-related share values to simulate FY 2017 payments. Certain events may limit the scope or accuracy of our impact analysis, because such an analysis is susceptible to forecasting errors due to other changes in the forecasted impact time period. The nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon hospices.

4. Detailed Economic Analysis

The FY 2017 hospice payment impacts appear in Table 19. We tabulate the resulting payments according to the classifications in Table 19 (for example, facility type, geographic region, facility ownership), and compare the difference between current and proposed payments to determine the overall impact.

The first column shows the breakdown of all hospices by urban or rural status, census region, hospital-based or freestanding status, size, and type of ownership, and hospice base. The second column shows the number of hospices in each of the categories in the first column.

The third column shows the effect of the annual update to the wage index. This represents the effect of using the proposed FY 2017 hospice wage index. The aggregate impact of this change is zero percent, due to the proposed hospice wage index standardization factor. However, there are distributional effects of the proposed FY 2017 hospice wage index.

The fourth column shows the effect of the proposed hospice payment update percentage for FY 2017. The proposed 2.0 percent hospice payment update percentage for FY 2017 is based on an estimated 2.8 percent inpatient hospital market basket update, reduced by a 0.5 percentage point productivity adjustment and by a 0.3 percentage point adjustment mandated by the Affordable Care Act, and is constant for all providers.

The fifth column shows the effect of all the proposed changes on FY 2017 hospice payments. It is projected that aggregate payments will increase by 2.0 percent, assuming hospices do not change their service and billing practices in response.

As illustrated in Table 19, the combined effects of all the proposals vary by specific types of providers and by location. For example, due to the changes proposed in this rule, the estimated impacts on FY 2017 payments range from a 1.0 percent increase for hospices providing care in the rural West North Central region to a 2.7 percent increase for hospices providing care in the rural Pacific region.

TABLE 19—PROJECTED IMPACT TO HOSPICES FOR FY 2017

(1)	Number of providers (2)	Updated wage data (%) (3)	Proposed hospice payment update (%) (4)	FY 2017 total change (%) (5)
All Hospices	4,142	0.0	2.0	2.0
Urban Hospices	3,151	0.0	2.0	2.0
Rural Hospices	991	−0.1	2.0	1.9
Urban Hospices—New England	137	0.4	2.0	2.4
Urban Hospices—Middle Atlantic	252	0.2	2.0	2.2
Urban Hospices—South Atlantic	419	−0.1	2.0	1.9
Urban Hospices—East North Central	396	−0.1	2.0	1.9
Urban Hospices—East South Central	160	−0.1	2.0	1.9
Urban Hospices—West North Central	218	−0.5	2.0	1.5
Urban Hospices—West South Central	610	−0.2	2.0	1.8
Urban Hospices—Mountain	312	−0.3	2.0	1.7
Urban Hospices—Pacific	608	0.6	2.0	2.6
Urban Hospices—Outlying	39	−0.7	2.0	1.3
Rural Hospices—New England	23	−0.4	2.0	1.6
Rural Hospices—Middle Atlantic	41	−0.2	2.0	1.8
Rural Hospices—South Atlantic	136	0.2	2.0	2.2
Rural Hospices—East North Central	139	0.1	2.0	2.1
Rural Hospices—East South Central	129	−0.1	2.0	1.9
Rural Hospices—West North Central	184	−1.0	2.0	1.0
Rural Hospices—West South Central	183	−0.2	2.0	1.8
Rural Hospices—Mountain	106	−0.2	2.0	1.8
Rural Hospices—Pacific	47	0.7	2.0	2.7
Rural Hospices—Outlying	3	−0.1	2.0	1.9
0—3,499 RHC Days (Small)	887	0.0	2.0	2.0
3,500–19,999 RHC Days (Medium)	2,000	0.0	2.0	2.0
20,000+ RHC Days (Large)	1,255	0.0	2.0	2.0
Non-Profit Ownership	1,069	0.1	2.0	2.1
For Profit Ownership	2,523	−0.1	2.0	1.9
Govt Ownership	159	0.5	2.0	2.5
Other Ownership	391	−0.1	2.0	1.9
Freestanding Facility Type	3,151	0.0	2.0	2.0
HHA/Facility-Based Facility Type	991	0.1	2.0	2.1

Source: FY 2015 hospice claims data from the Standard Analytic Files for CY 2014 (as of June 30, 2015) and CY 2015 (as of December 31, 2015).

Region Key:

New England=Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont; Middle Atlantic = Pennsylvania, New Jersey, New York; South Atlantic = Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, West Virginia; East North Central = Illinois, Indiana, Michigan, Ohio, Wisconsin; East South Central = Alabama, Kentucky, Mississippi, Tennessee; West North Central = Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota; West South Central = Arkansas, Louisiana, Oklahoma, Texas; Mountain = Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, Wyoming; Pacific = Alaska, California, Hawaii, Oregon, Washington; Outlying = Guam, Puerto Rico, Virgin Islands.

5. Alternatives Considered

Since the hospice payment update percentage is determined based on statutory requirements, we did not consider not updating hospice payment rates by the payment update percentage. The proposed 2.0 percent hospice payment update percentage for FY 2017 is based on a proposed 2.8 percent inpatient hospital market basket update for FY 2017, reduced by a 0.5 percentage point productivity adjustment and by an additional 0.3 percentage point. Payment rates since FY 2002 have been updated according to section 1814(i)(1)(C)(ii)(VII) of the Act, which states that the update to the payment rates for subsequent years must be the market basket percentage for that FY. Section 3401(g) of the Affordable Care Act also mandates that, starting with FY 2013 (and in subsequent years), the hospice payment update percentage will be annually reduced by changes in economy-wide productivity as specified in section 1886(b)(3)(B)(xi)(II) of the Act. In addition, section 3401(g) of the Affordable Care Act mandates that in FY 2013 through FY 2019, the hospice payment update percentage will be reduced by an additional 0.3 percentage point (although for FY 2014 to FY 2019, the potential 0.3 percentage point reduction is subject to suspension under conditions specified in section 1814(i)(1)(C)(v) of the Act).

We considered not proposing a hospice wage index standardization factor. However, as discussed in section III.C.1 of this proposed rule, we believe that adopting a hospice wage index standardization factor would provide a safeguard to the Medicare program, as well as to hospices, because it will mitigate changes in overall hospice expenditures due to annual fluctuations in the hospital wage data from year-to-year by ensuring that hospice wage index updates and revisions are implemented in a budget neutral manner. We estimate that if the hospice wage index standardization factor is not finalized, total payments in a given year would increase or decrease by as much as 0.3 percent or $50 million.

6. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), in Table 20, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this proposed rule. Table 20 provides our best estimate of the possible changes in Medicare payments under the hospice benefit as a result of the policies in this proposed rule. This estimate is based on the data for 4,067 hospices in our impact analysis file, which was constructed using FY 2015 claims available as of December 31, 2015. All expenditures are classified as transfers to hospices.

TABLE 20—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED TRANSFERS, FROM FY 2016 TO FY 2017

[In $millions]

Category	Transfers
FY 2017 Hospice Wage Index and Payment Rate Update	
Annualized Monetized Transfers.	$330.*
From Whom to Whom?	Federal Government to Medicare Hospices.

*The net increase of $330 million in transfer payments is a result of the 2.0 percent hospice payment update percentage compared to payments in FY 2016.

7. Conclusion

We estimate that aggregate payments to hospices in FY 2017 would increase by $330 million, or 2.0 percent, compared to payments in FY 2016. We estimate that in FY 2017, hospices in urban and rural areas would experience, on average, a 2.0 percent and a 1.9 percent increase, respectively, in estimated payments compared to FY 2016. Hospices providing services in the urban Pacific and rural Pacific regions would experience the largest estimated increases in payments of 2.6 percent and 2.7 percent, respectively. Hospices serving patients in rural areas in the West North Central region would experience the lowest estimated increase of 1.0 percent in FY 2017 payments.

B. Regulatory Flexibility Act Analysis

The RFA requires agencies to analyze options for regulatory relief of small businesses if a rule has a significant impact on a substantial number of small entities. The great majority of hospitals and most other health care providers and suppliers are small entities by meeting the Small Business Administration (SBA) definition of a small business (in the service sector, having revenues of less than $7.5 million to $38.5 million in any 1 year), or being nonprofit organizations. For purposes of the RFA, we consider all hospices as small entities as that term is used in the RFA. HHS's practice in interpreting the RFA is to consider effects economically "significant" only if they reach a threshold of 3 to 5 percent or more of total revenue or total costs. The effect of the proposed FY 2017 hospice payment update percentage results in an overall increase in estimated hospice payments of 2.0 percent, or $330 million. Therefore, the Secretary has determined that this proposed rule will not create a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. This proposed rule only affects hospices. Therefore, the Secretary has determined that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

C. Unfunded Mandates Reform Act Analysis

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2016, that threshold is approximately $146 million. This proposed rule is not anticipated to have an effect on State, local, or tribal governments, in the aggregate, or on the private sector of $146 million or more.

VI. Federalism Analysis and Regulations Text

Executive Order 13132, Federalism (August 4, 1999) requires an agency to provide federalism summary impact statement when it promulgates a proposed rule (and subsequent final rule) that has federalism implications and which imposes substantial direct requirement costs on State and local governments which are not required by statute. We have reviewed this proposed rule under these criteria of Executive Order 13132, and have determined that it will not impose substantial direct costs on State or local governments.

List of Subjects in 42 CFR Part 418

Health facilities, Hospice care, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare and Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

PART 418—HOSPICE CARE

■ 1. The authority citation for part 418 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 2. Section 418.312 is amended by adding paragraph (i) to read as follows:

§418.312 Data submission requirements under the hospice quality reporting program.

* * * * *

(i) Retention of HQRP Measures Adopted for Previous Payment Determinations. If HQRP measures are re-endorsed by the NQF without substantive changes in specifications, CMS will implement the measure without notice and comment rulemaking.

Dated: April 1, 2016.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: April 14, 2016.

Sylvia M. Burwell,

Secretary, Department of Health and Human Services.

[FR Doc. 2016–09631 Filed 4–21–16; 4:15 pm]

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Part III

Department of the Treasury

Internal Revenue Service

26 CFR Part 1
Suspension of Benefits Under the Multiemployer Pension Reform Act of 2014: Final Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9765]

RIN 1545–BM66, RIN 1545–BM86

Suspension of Benefits Under the Multiemployer Pension Reform Act of 2014

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: The Multiemployer Pension Reform Act of 2014 ("MPRA"), which was enacted by Congress as part of the Consolidated and Further Continuing Appropriations Act of 2015, relates to multiemployer defined benefit pension plans that are projected to have insufficient funds, within a specified timeframe, to pay the full plan benefits to which individuals will be entitled (referred to as plans in "critical and declining status"). Under MPRA, the sponsor of a plan in critical and declining status is permitted to reduce the pension benefits payable to plan participants and beneficiaries if certain conditions and limitations are satisfied (referred to in MPRA as a "suspension of benefits"). MPRA requires the Secretary of the Treasury (Treasury Department), in consultation with the Pension Benefit Guaranty Corporation (PBGC) and the Secretary of Labor (Labor Department), to approve or deny applications by sponsors of these plans to reduce benefits. These regulations affect active, retired, and deferred vested participants and beneficiaries of multiemployer plans that are in critical and declining status as well as employers contributing to, and sponsors and administrators of, those plans.

DATES: *Effective date:* These regulations are effective on April 28, 2016.

Applicability date: These regulations apply to suspensions for which the approval or denial is issued on or after April 26, 2016. In the case of a systemically important plan, the final regulations apply with respect to any modified suspension implemented on or after April 26, 2016.

FOR FURTHER INFORMATION CONTACT: The Department of the Treasury MPRA guidance information line at (202) 622–1559 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these regulations has been reviewed and approved by the Office of Management and Budget under control number 1545–2260.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 432(e)(9) of the Internal Revenue Code (Code), as amended by the Multiemployer Pension Reform Act of 2014, Division O of the Consolidated and Further Continuing Appropriations Act, 2015, Public Law 113–235 (128 Stat. 2130 (2014)) (MPRA).

I. Statutory Provisions

Section 412 of the Code contains minimum funding rules that generally apply to pension plans. Section 431 sets forth the funding rules that apply specifically to multiemployer defined benefit plans. Section 432 sets forth additional rules that apply to certain multiemployer plans in endangered or critical status and permits plans in critical status to be amended to reduce certain otherwise protected benefits (referred to as "adjustable benefits"). Section 305 of the Employee Retirement Income Security Act of 1974, Public Law 93–406 (88 Stat. 829 (1974)), as amended (ERISA), sets forth rules that are parallel to those set forth in section 432 of the Code.

Section 201 of MPRA amended section 432 to add a new status, called critical and declining status, for multiemployer defined benefit plans. Section 432(b)(6) provides that a plan is treated as being in critical and declining status if the plan satisfies any of the specified criteria for the plan to be in critical status and, in addition, is projected to become insolvent within the meaning of section 418E during the current plan year or any of the 14 succeeding plan years (or 19 succeeding plan years if the plan has a ratio of inactive participants to active participants that exceeds two to one or if the funded percentage of the plan is less than 80 percent).

Section 201 of MPRA also amended section 432(e)(9) to prescribe benefit suspension rules for plans in critical and declining status.[1] Section 432(e)(9)(A) provides that, notwithstanding section 411(d)(6) and subject to section 432(e)(9)(B) through (I), the plan sponsor of a plan in critical and declining status may, by plan amendment, suspend benefits that the sponsor deems appropriate. Section 411(d)(6) provides generally that a plan does not satisfy section 411 if an amendment to the plan decreases a participant's accrued benefit. For this purpose, a plan amendment that has the effect of eliminating or reducing an early retirement benefit or a retirement-type subsidy or eliminating an optional form of benefit with respect to benefits attributable to service before the amendment is treated as reducing accrued benefits.

A suspension of benefits is defined in section 432(e)(9)(B)(i) as the temporary or permanent reduction of any current or future payment obligation of the plan to any participant or beneficiary under the plan, whether or not the participant or beneficiary is in pay status at the time of the suspension of benefits. Under section 432(e)(9)(B)(ii), any suspension will remain in effect until the earlier of when the plan sponsor provides benefit improvements in accordance with section 432(e)(9)(E) or when the suspension expires by its own terms. Thus, if a suspension does not expire by its own terms, it continues indefinitely.

Under the statute, a plan will not be liable for any benefit payments not made as a result of a suspension of benefits. All references to suspensions of benefits, increases in benefits, or resumptions of suspended benefits with respect to participants also apply with respect to benefits of beneficiaries or alternative payees of participants. See section 432(e)(9)(B)(iv).

A. Retiree Representative

In the case of a plan with 10,000 or more participants, section 432(e)(9)(B)(v) requires the plan sponsor to select a plan participant in pay status to act as a retiree representative. The retiree representative is required to advocate for the interests of the retired and deferred vested participants and beneficiaries of the plan throughout the suspension approval process. The plan must provide for the retiree representative's reasonable expenses, including reasonable legal and actuarial support, commensurate with the plan's size and funded status.

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[1] Section 201 of MPRA makes parallel amendments to section 305 of ERISA. The Department of the Treasury has interpretive jurisdiction over the subject matter of these provisions under ERISA as well as the Code. See also section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713). Thus, these regulations issued under section 432 of the Code apply as well for purposes of section 305 of ERISA.

B. Conditions for Suspensions

Section 432(e)(9)(C) sets forth conditions that must be satisfied before a plan sponsor of a plan in critical and declining status for a plan year may suspend benefits. One condition is that the plan actuary must certify, taking into account the proposed suspension of benefits (and, if applicable, a proposed partition of the plan under section 4233 of ERISA (partition)), that the plan is projected to avoid insolvency within the meaning of section 418E, assuming the suspension of benefits continues until it expires by its own terms or, if no such expiration date is set, indefinitely.

Another condition requires the plan sponsor to determine, in a written record to be maintained throughout the period of the benefit suspension, that although all reasonable measures to avoid insolvency have been taken (and continue to be taken during the period of the benefit suspension), the plan is still projected to become insolvent unless benefits are suspended. In making the determination that all reasonable measures have been taken to avoid insolvency, the plan sponsor may choose to take into account various factors that may include one or more of ten factors identified in the statute. See section 432(e)(9)(C)(ii).

C. Limitations on Suspensions

Section 432(e)(9)(D) contains limitations on the benefits that may be suspended, some of which apply to plan participants and beneficiaries on an individual basis and some of which apply on an aggregate basis. Under the statute, an individual's monthly benefit may not be reduced below 110 percent of the monthly benefit that is guaranteed by PBGC under section 4022A of ERISA on the date of the suspension. In addition, no benefits based on disability (as defined under the plan) may be suspended. In the case of a participant or beneficiary who has attained age 75 as of the effective date of a suspension, the statute provides that the suspension may not exceed the applicable percentage of the individual's maximum suspendable benefit (the age-based limitation). The maximum suspendable benefit is the maximum amount of an individual's benefit that would be suspended without regard to the age-based limitation. The applicable percentage is a percentage that is calculated by dividing (i) the number of months during the period that begins with the month after the month in which the suspension is effective and ends with the month in which that participant or beneficiary attains the age of 80 by (ii) 60 months. Thus, the suspension cannot apply to the benefit of an individual who has attained age 80 as of the end of the month that includes the effective date of the suspension.

Section 432(e)(9)(D) also requires the aggregate benefit suspensions (considered, if applicable, in connection with a partition) to be reasonably estimated to achieve, but not materially exceed, the level that is needed to avoid insolvency. If a suspension of benefits is made in combination with a partition, the statute provides that the suspension may not occur before the effective date of the partition. Under the statute, any suspension of benefits must be equitably distributed across the participant and beneficiary population, taking into account various factors chosen by the plan sponsor that may include one or more of 11 factors identified in the statute. Section 432(e)(9)(D)(vii) provides additional rules that apply to certain plans.

D. Benefit Improvements

Section 432(e)(9)(E) sets forth rules relating to benefit improvements made while a suspension of benefits is in effect. Under this provision, a benefit improvement is defined as a resumption of suspended benefits, an increase in benefits, an increase in the rate at which benefits accrue, or an increase in the rate at which benefits become nonforfeitable under the plan.

The statute provides that a plan sponsor may, in its sole discretion, provide benefit improvements while a suspension of benefits is in effect. However, a plan sponsor may not increase plan liabilities by reason of any benefit improvement for any participant or beneficiary who is not in pay status (in other words, those who are not yet receiving benefits, such as active employees or deferred vested employees) unless (1) the benefit improvement is accompanied by an equitable distribution of benefit improvements for those who have begun to receive benefits (typically, retirees), and (2) the plan actuary certifies that, after taking the benefit improvement into account, the plan is projected to avoid insolvency indefinitely. Whether an individual is in pay status for this purpose is generally based on whether the individual's benefits began before the first day of the plan year for which the benefit improvement would take effect.

E. Notice of Proposed Suspension

A plan sponsor may not suspend benefits unless notice is provided in accordance with section 432(e)(9)(F). Under this section, concurrently with an application to suspend benefits under section 432(e)(9)(G), the plan sponsor must give notice to: (1) Plan participants and beneficiaries who may be contacted by reasonable efforts, (2) each employer that has an obligation to contribute (within the meaning of section 4212(a) of ERISA) under the plan, and (3) each employee organization that represents plan participants employed by those employers for purposes of collective bargaining. The notice must contain sufficient information to enable individuals to understand the effect of any suspension of benefits, including an individualized estimate (on an annual or monthly basis) of the effect on each participant or beneficiary. The notice must also contain certain other specified information. The notice must be provided in a form and manner prescribed in guidance issued by the Treasury Department in consultation with PBGC and the Labor Department, written in a manner so as to be understood by the average plan participant, and may be provided in written, electronic, or other appropriate form to the extent it is reasonably accessible to those to whom notice must be furnished.

Any notice provided under section 432(e)(9)(F)(i) will satisfy the requirement for notice of a significant reduction in benefits described in section 4980F. See section 432(e)(9)(F)(iv).

F. Approval or Rejection of Proposed Suspension

Section 432(e)(9)(G) describes the process for approval or rejection of a plan sponsor's application for a suspension of benefits. Under the statute, the Treasury Department, in consultation with PBGC and the Labor Department, must approve an application upon finding that the plan is eligible for the suspension and has satisfied the criteria of sections 432(e)(9)(C), (D), (E), and (F). In evaluating whether a plan sponsor has met the criteria in section 432(e)(9)(C)(ii) (a plan sponsor's determination that, although all reasonable measures have been taken, the plan will become insolvent if benefits are not suspended), the plan sponsor's consideration of factors listed in that clause must be reviewed. The statute also requires that the plan sponsor's determinations in an application for a suspension of benefits be accepted unless they are clearly erroneous.

Section 432(e)(9)(G) also requires an application for a suspension of benefits to be published on the Web site of the Department of the Treasury and requires the Treasury Department to publish a notice in the **Federal Register** within 30 days of receiving a suspension application. The notice must solicit comments from contributing employers, employee organizations, and participants and beneficiaries of the plan for which a suspension application was made, as well as other interested parties.

Within 225 days after an application for a suspension of benefits is submitted, the statute requires the Treasury Department, in consultation with PBGC and the Labor Department, to approve or deny the application. If the plan sponsor is not notified within that 225-day period that it has failed to satisfy one or more applicable requirements, then the application is deemed to be approved. If the application is rejected, then a notice to the plan sponsor must detail the specific reasons for the rejection, including reference to the specific requirement not satisfied. Approval or denial of an application is treated as final agency action for purposes of 5 U.S.C. 704 (that is, the approval or denial is treated as final agency action for purposes of the Administrative Procedure Act, Public Law 79–404 (60 Stat. 237 (1946), as amended (APA)).

G. Participant Vote on Proposed Benefit Reduction

If a suspension application is approved, it cannot take effect before a vote of plan participants and beneficiaries on the suspension is conducted. *See* section 432(e)(9)(H). The vote will be administered by the Treasury Department, in consultation with PBGC and the Labor Department, within 30 days after approval of the suspension application. The plan sponsor is required to provide a ballot for the vote (subject to approval by the Treasury Department, in consultation with PBGC and the Labor Department). The ballot must include certain information specified in the statute. If a majority of plan participants and beneficiaries do not vote to reject the suspension, then the statute requires the Treasury Department, in consultation with PBGC and the Labor Department, to issue a final authorization to suspend benefits within seven days after the vote.

If a majority of plan participants and beneficiaries vote to reject the suspension, then the statute requires the Treasury Department, in consultation with PBGC and the Labor Department, to determine whether the plan is a systemically important plan no later than 14 days after the results of the vote are certified. A systemically important plan is a plan for which PBGC projects the present value of projected financial assistance payments to exceed $1.0 billion, as indexed, if suspensions are not implemented.

If a majority of plan participants and beneficiaries vote to reject the suspension and the plan is not a systemically important plan, a final authorization to suspend benefits will not be issued. In such a case, the statute provides that the plan sponsor may submit a new application for approval of a suspension of benefits to the Treasury Department.

If it is determined that the plan is systemically important, then the Participant and Plan Sponsor Advocate selected under section 4004 of ERISA[2] has a 30-day period to submit recommendations to the Treasury Department with respect to the suspension that was rejected by the vote or recommendations for any modifications to that suspension. Even if that suspension was rejected by the vote, the statute requires the Treasury Department to permit the implementation of either: (1) The proposed benefit suspension, or (2) a modification of that suspension made by the Treasury Department in consultation with PBGC and the Labor Department. The Treasury Department must complete this requirement within 90 days after certification of the results of a vote rejecting a suspension for a systemically important plan (and a modification of the suspension by the Treasury Department is permitted only if the plan is projected to avoid insolvency under the modification). In such a case, the statute requires the Treasury Department to issue the final authorization to suspend in sufficient time to allow the suspension or a modified suspension to be implemented by the end of the 90-day period following certification of the results of that vote.

Section 432(e)(9)(I)(i) allows a plan sponsor to challenge a denial of an application for suspension only after the application is denied. Under the statute, an action challenging the approval of a suspension may be brought only following the issuance of a final authorization to suspend. The statute also provides that a court will review an action challenging approval of a suspension of benefits in accordance with 5 U.S.C. 706 (which sets forth the standard of review applicable for purposes of the APA) and will not grant a temporary injunction with respect to a suspension unless it finds a clear and convincing likelihood that the plaintiff will prevail on the merits. Under section 432(e)(9)(I)(iii), participants and beneficiaries affected by a suspension "shall not have a cause of action under this title." An action challenging either the approval of a suspension of benefits or the denial of an application for a suspension of benefits may not be brought more than one year after the earliest date on which the plaintiff acquired or should have acquired actual knowledge of the existence of the cause of action. See section 432(e)(9)(I)(iv).

II. Regulatory and Other Administrative Guidance

On February 18, 2015, the Department of the Treasury issued a Request for Information on Suspensions of Benefits under the Multiemployer Pension Reform Act of 2014 in the **Federal Register** (80 FR 8578) (request for information). The request for information included questions focusing on certain matters to be addressed in guidance implementing section 432(e)(9) and indicated that multiemployer plans should not submit applications for suspensions of benefits prior to a date specified in such future guidance.

On June 19, 2015, the Treasury Department and the IRS published temporary (TD 9723) and proposed regulations (REG–102648–15) under section 432(e)(9) in the **Federal Register** at 80 FR 35207 and 80 FR 35262, respectively (June 2015 regulations). The June 2015 regulations provide guidance regarding section 432(e)(9), setting forth the requirements for a plan sponsor to apply for a suspension of benefits and for the Treasury Department to process such an application. The June 2015 regulations reflect consideration of comments received in response to the request for information. The preamble to the June 2015 temporary regulations states that it is expected that no application proposing a benefit suspension will be approved prior to the issuance of final regulations, and that, if a plan sponsor chooses to submit an application for approval of a proposed benefit suspension before the issuance of final regulations, then the plan sponsor may need to revise the proposed suspension (and potentially the related notices to plan participants) or supplement the application to take into account any differences in the final regulations.

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[2] Pursuant to section 4004 of ERISA, the Participant and Plan Sponsor Advocate acts as a liaison between PBGC, sponsors of defined benefit pension plans insured by PBGC, and participants in plans trusteed by PBGC, and performs related duties.

On June 19, 2015, the IRS also released Rev. Proc. 2015–34, 2015–27 I.R.B. 4. The revenue procedure details application procedures for a proposed suspension of benefits and also contains a model notice under section 432(e)(9)(F).

On September 2, 2015, the Treasury Department and the IRS published temporary (TD 9735) and proposed regulations (REG–123640–15) on the voting provisions under section 432(e)(9)(H) in the **Federal Register** at 80 FR 52972 and 80 FR 53068, respectively (September 2015 regulations). The September 2015 regulations reflect consideration of comments received pursuant to the request for information.

On September 10, 2015, the Treasury Department and the IRS conducted a public hearing on the June 2015 regulations, at which speakers also commented on the September 2015 regulations. A public hearing on the September 2015 regulations was held on December 18, 2015.

On February 11, 2016, the Treasury Department and the IRS published proposed regulations (REG–101701–16) regarding the specific limitation on a suspension of benefits under section 432(e)(9)(D)(vii) in the **Federal Register** at 81 FR 7253 (February 2016 regulations). This specific limitation governs the application of a suspension of benefits under any plan that includes benefits directly attributable to a participant's service with any employer that has, prior to December 16, 2014, withdrawn from the plan in a complete withdrawal, paid its full withdrawal liability, and, pursuant to a collective bargaining agreement, assumed liability for providing benefits to participants and beneficiaries equal to any benefits for such participants and beneficiaries reduced as a result of the financial status of the plan. A public hearing on the February 2016 regulations was held on March 22, 2016.

After consideration of the comments received, the provisions of the June 2015 proposed regulations and the September 2015 proposed regulations (collectively, "2015 regulations") are adopted by this Treasury decision, subject to certain changes that are summarized in this preamble. This Treasury decision also removes the temporary regulations under 432(e)(9) that were published in June 2015 and September 2015. This Treasury decision does not contain final action on the February 2016 regulations. On April 26, 2016 the IRS released Rev. Proc. 2016–27, 2016–19 I.R.B.__, which updates the application procedures and model notice set forth in Rev. Proc. 2015–34. The Treasury Department consulted with PBGC and the Labor Department in developing these regulations and other guidance.

Explanation of Provisions

I. Overview

These final regulations provide guidance on requirements under section 432(e)(9) regarding a suspension of benefits under a multiemployer defined benefit plan that is in critical and declining status. Except as otherwise provided, these final regulations adopt the provisions of the 2015 regulations.

II. General Rules on Suspension of Benefits

These final regulations provide that, subject to section 432(e)(9)(B) through (I), the plan sponsor of a multiemployer plan that is in critical and declining status within the meaning of section 432(b)(6) for a plan year may, by plan amendment, implement a suspension of benefits that the plan sponsor deems appropriate. Such a suspension is permitted notwithstanding the generally applicable anti-cutback provisions of section 411(d)(6). The final regulations clarify that, as amended, the terms of the plan must satisfy the requirements of section 401(a). For example, after the effective date of a plan amendment imposing a suspension of benefits, the plan must satisfy the requirements of section 411 with respect to the accrued benefit as reduced, if applicable, pursuant to that amendment. The plan amendment implementing a suspension of benefits must be adopted in a plan year in which the plan is in critical and declining status.

A. Contingent Suspensions

The 2015 regulations provide that once a plan is amended to suspend benefits, the plan may pay or continue to pay a reduced level of benefits pursuant to the suspension only if the terms of the plan are consistent with the requirements of section 432(e)(9) and the regulations. The 2015 regulations state that a plan's terms are consistent with the requirements of section 432(e)(9) even if they provide that, instead of a suspension of benefits occurring in full on a specified effective date, the amount of a suspension will phase in or otherwise change in a definite, pre-determined manner as of a specified future effective date or dates. The 2015 regulations indicate that a plan's terms are inconsistent with the statutory requirements, however, if they provide that the amount of a suspension will change contingent upon the occurrence of any other specified future event, condition, or development. For example, a plan is not permitted to provide that an additional or larger suspension of benefits is triggered if the plan's funded status deteriorates. Similarly, the 2015 regulations provide that a plan is not permitted to provide that, contingent upon a specified future event, condition, or development, a suspension of benefits will be automatically reduced (except if the plan sponsor fails to make the annual determination that the plan would not be projected to avoid insolvency unless benefits are suspended).

Some commenters objected to the provisions of the 2015 regulations that treat contingencies as inconsistent with the requirements of section 432(e)(9) and asked that certain types of contingencies, such as contingencies based on actuarial gain or loss, be allowed. These commenters assert that permitting these types of contingent suspensions would be consistent with the policy underlying the rule that the aggregate suspension be reasonably estimated to achieve, but not materially exceed, the level necessary to avoid plan insolvency.

Permitting benefits to be reduced or increased on the occurrence of future contingencies, however, would raise a number of difficult challenges in complying with statutory requirements: The additional complexity of the calculations relating to whether the solvency requirements are satisfied and whether the distribution of the suspension is equitable; the inability of the suspension notice to sufficiently inform affected individuals of the actual reduction to their benefits; and the potential that the contingent suspension could effectively result in benefit increases that fail to comply with the statutory requirements relating to benefit increases. Therefore, the final regulations retain the general rule that contingent suspensions are inconsistent with the requirements of section 432(e)(9).

However, individual-level contingencies do not raise the same concerns as other post-suspension contingencies. Accordingly, the final regulations clarify that a suspension can take into account individual-level contingencies (such as retirement, death, or disability) for individuals who have not commenced benefits before the effective date of the suspension. For example, a suspension of benefits can reduce early retirement subsidies with respect to participants who have not commenced benefits before the effective date of the suspension. Without this clarification, this type of reduction could be viewed as impermissible (because the level of the suspension would be based on whether and when an individual chooses to retire early).

Although the final regulations permit certain individual-level contingencies, the post-suspension terms of the plan must satisfy all of the qualification requirements of section 401(a). Thus, for example, an individual-level, post-suspension contingency that reduces an early retirement subsidy would be permitted, provided that the suspension does not result in an early retirement benefit that is less valuable than the post-suspension accrued benefit.

B. Definitions

As under the 2015 regulations, these final regulations apply the section 432(j)(6) definition of a person in pay status under a multiemployer plan. Under that definition, a person is in pay status if, at any time during the current plan year, the person is a participant, beneficiary, or alternate payee under the plan and is paid an early, late, normal, or disability retirement benefit under the plan (or a death benefit under the plan related to a retirement benefit).

These final regulations define the term plan sponsor to mean the association, committee, joint board of trustees, or other similar group of representatives of the parties that establishes or maintains the multiemployer plan. However, in the case of a plan described in section 404(c), or a continuation of such a plan, the term plan sponsor means the association of employers that is the employer settlor of the plan.

In the case of an individual who is receiving benefits when the suspension is implemented, the final regulations provide that the effective date of suspension is the first date as of which any of the individual's benefits are not paid as a result of the suspension.

In the case of an individual who is not receiving benefits as of the date a suspension is implemented, the 2015 regulations define the effective date of suspension as the first date as of which the individual's accrued benefit is reduced as a result of the suspension. In connection with the new provision in the final regulations permitting suspensions with individual-level contingencies, the final regulations provide a revised definition of effective date of suspension that applies with respect to an individual who is not receiving benefits as of the date the suspension is implemented and for whom the suspension reduces benefits that are not accrued benefits. For such an individual, the effective date of suspension is the first date as of which the individual's entitlement to benefits is reduced as a result of the implementation of the suspension, regardless of whether the individual is eligible to commence benefits at that date. This change to the definition of effective date of suspension will affect situations in which early retirement factors are changed in a manner that reduces the early retirement benefit (independent of any reduction of the accrued benefit) and the final regulations include an example of a suspension that provides for the reduction of an early retirement benefit effective January 1, 2019. In that case, the effective date of the suspension is January 1, 2019, even for a participant who does not commence benefits until a later year.

As under the June 2015 regulations, the final regulations provide that, if a suspension of benefits includes more than one reduction in benefits over time, such that benefits are scheduled to be reduced by an additional amount after benefits are first reduced pursuant to the suspension, then each date as of which benefits are reduced is treated as a separate effective date of the suspension. This requires, for example, that the age-based limitation be separately applied as of the effective date of each reduction under such a phased-in suspension. However, if the effective date of the final scheduled reduction in benefits in a series of reductions pursuant to a phased-in suspension is less than three years after the effective date of the first reduction then, in the interest of avoiding undue administrative complexity, the effective date of the first reduction will be treated as the effective date of all subsequent reductions pursuant to that suspension. For example, if a suspension provides that benefits will be reduced by a specified percentage effective January 1, 2017, by an additional percentage effective January 1, 2018, and by an additional percentage effective January 1, 2019, with no subsequent changes scheduled, it would meet the three-year condition to treat January 1, 2017, as the effective date for all three reductions. However, if the suspension provided for a further reduction effective January 1, 2020, the suspension would not be treated as satisfying the three-year condition and therefore would be treated under the regulations as having four separate effective dates.

The final regulations define the term suspension of benefits to mean the temporary or permanent reduction, pursuant to the terms of the plan, of any current or future payment obligation of the plan with respect to any plan participant. A suspension of benefits can apply with respect to a plan participant regardless of whether the participant, beneficiary, or alternate payee has commenced receiving benefits before the effective date of the suspension of benefits. If a plan pays a reduced level of benefits pursuant to a suspension of benefits that complies with the requirements of section 432(e)(9), then the plan is not liable for any benefits not paid as a result of the suspension.

A suspension of benefits may be of indefinite duration or may expire as of a certain date, and any expiration date for a suspension of benefits must be specified in the plan amendment implementing the suspension. The final regulations provide that a plan sponsor may amend the plan to eliminate some or all of a suspension of benefits, provided that the amendment satisfies the requirements that apply to benefit improvements under section 432(e)(9)(E) (see section VI of this preamble). The final regulations also provide that, except as otherwise specified, all references to suspensions of benefits, increases in benefits, or resumptions of suspended benefits with respect to participants also apply with respect to benefits of beneficiaries or alternate payees (as defined in section 414(p)(8)) of participants.

III. Retiree Representative

The final regulations generally adopt, with some clarifications, the provisions of the 2015 regulations with respect to the retiree representative. The retiree representative, who must be a plan participant in pay status, is selected by the plan sponsor to advocate for the interests of the retired and deferred vested participants and beneficiaries of the plan throughout the suspension approval process.

The final regulations implement the requirement that a retiree representative must be selected for a plan with 10,000 or more participants. For purposes of determining whether a plan has 10,000 or more participants, the final regulations provide that the number of participants is the number reported on the most recently filed Form 5500, "Annual Return/Report of Employee Benefit Plan."[3] The final regulations also provide that the plan sponsor must select the retiree representative at least 60 days before the plan sponsor submits an application to suspend benefits and that the retiree representative must be a plan participant who is in pay status and may or may not be a plan trustee.

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[3] On the Form 5500 for the 2015 plan year, this is the total number of participants as of the end of the plan year that is reported on Part II, Line 6f.

In order to increase retiree representation in connection with applications to suspend benefits, the final regulations permit a plan sponsor of a plan that has fewer than 10,000 participants to select a retiree representative in connection with such an application and plan sponsors are encouraged to do so. If a retiree representative is selected for such a plan, the rules that apply to retiree representatives for plans with 10,000 or more participants (other than the rule concerning the size of the plan and the timing of the appointment) will apply.

The final regulations require that, upon request, the plan sponsor must promptly provide the retiree representative with relevant information (such as plan documents and data) that is reasonably necessary to enable the retiree representative to perform the retiree representative's role, which includes, for example, the retiree representative's attendance at trustee meetings at which the suspension design is being developed. This requirement applies both while the suspension is being developed and during the period while the suspension application is pending with the Treasury Department. The final regulations provide for the retiree representative to serve in this role beginning before the plan sponsor submits this application and to continue in this role, at the discretion of the plan sponsor, throughout the entire period of the benefit suspension, rather than only until the completion of the suspension approval process. Such an extension would enable the retiree representative to monitor compliance with the ongoing requirements relating to the suspension, such as the requirement that the plan sponsor make annual determinations that all reasonable measures to avoid insolvency have been taken and continue to be taken but that a suspension is necessary to avoid insolvency, and that the plan sponsor follow the rules relating to benefit improvements.

The final regulations adopt the provision from the 2015 regulations that requires the plan to pay reasonable expenses incurred by the retiree representative, commensurate with the plan's size and funded status, with slight modifications. The expenses that must be paid by the plan include reasonable expenses for legal and actuarial support, which may be obtained to influence the design of a suspension, to analyze a proposed suspension contained in an application, or for other advocacy purposes. Numerous commenters noted the importance of communication between the retiree representative and retired and deferred vested participants and beneficiaries. In response, the final regulations clarify that the plan must pay other reasonable expenses incurred by the retiree representative, such as any reasonable expenses incurred in communicating with the retired and deferred vested participants and beneficiaries of the plan about the proposed suspension (because communication with these individuals is generally necessary to advocate for their interests). The final regulations include, as an example of a type of expense that the plan must pay, any reasonable expense incurred in communicating with retired and deferred vested participants and beneficiaries of the plan. This clarification was made to reflect that communicating with these individuals is a necessary component of advocating for their interests.

The types of communication that are necessary to enable the retiree representative to advocate for the interests of retired and deferred vested participants and beneficiaries typically include soliciting input directly from these individuals that could be used to influence the design of a suspension before the plan sponsor applies for approval of a suspension. After an application for suspension has been submitted for approval, necessary communication would generally include providing these individuals with additional information regarding the proposed suspension and the suspension approval process so that they can submit comments. Communication also includes meeting with groups of affected individuals (either in person or telephonically), so that the retiree representative can better understand their concerns and the potential effects of a proposed suspension in order to advocate on behalf of the retired and deferred vested participants and beneficiaries when preparing a comment or in recommending that the plan sponsor withdraw the application and submit a revised suspension. To further this communication, the plan sponsor should inform the retiree representative of, and invite the retiree representative to, any meetings between the plan sponsor and the retirees, deferred vested participants and beneficiaries regarding the proposed suspension.

If a retiree representative is unwilling or unable to fulfill his or her obligations, then the retiree representative can be replaced so that the retirees, deferred vested participants and beneficiaries have representation throughout the process.

The final regulations refer to section 432(e)(9)(B)(v)(III) for rules relating to the fiduciary status of a retiree representative, but do not provide additional guidance with respect to this provision.

IV. Conditions for Suspensions

A plan sponsor of a plan in critical and declining status may suspend benefits only if the actuarial certification requirement in section 432(e)(9)(C)(i) and the plan sponsor determinations requirements in section 432(e)(9)(C)(ii) are satisfied. Under the final regulations, a plan sponsor may not suspend benefits unless the plan sponsor makes initial and annual determinations that the plan is projected to become insolvent unless benefits are suspended, although all reasonable measures to avoid insolvency have been taken. These determinations are based on the non-exclusive list of factors described in section 432(e)(9)(C)(ii).

A. Actuarial Certification

As under the 2015 regulations, the final regulations provide that the actuarial certification requirement in section 432(e)(9)(C)(i) is satisfied if, taking into account the proposed suspension of benefits (and, if applicable, a proposed partition of the plan), the plan's actuary certifies that the plan is projected to avoid insolvency within the meaning of section 418E,[4] assuming the suspension of benefits continues until it expires by its own terms or, if no such expiration date is set, indefinitely. The final regulations prescribe rules for the comparable requirement that the suspension (in combination with a partition, if applicable) be reasonably estimated to avoid insolvency under section 432(e)(9)(D)(iv).

B. Plan Sponsor Determinations

1. Initial Plan Sponsor Determinations

The final regulations adopt, with modifications described herein, the provisions of the 2015 regulations that a plan satisfies the initial plan sponsor determinations requirement only if the plan sponsor determines that: (1) All reasonable measures to avoid insolvency, within the meaning of section 418E, have been taken, and (2) the plan would not be projected to avoid insolvency if no suspension of benefits were applied under the plan.

The final regulations provide that a plan sponsor, in making its determination that all reasonable measures to avoid insolvency have been taken, may take into account the non-exclusive list of factors set forth in section 432(e)(9)(C)(ii). In addition, when making the initial determination that the plan would not be projected to avoid insolvency if no suspension of benefits were applied under the plan, the final regulations provide that a plan sponsor may rely on the actuarial certification made pursuant to section 432(b)(3)(A)(i) that the plan is in critical and declining status for the plan year.

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[4] Under section 418E(b)(1), in general, a multiemployer plan is insolvent for a plan year if the plan's available resources are not sufficient to pay plan benefits when due for the plan year.

2. Annual Plan Sponsor Determinations

Under the 2015 regulations, a plan sponsor would satisfy the annual plan sponsor determinations requirement for a plan year only if the plan sponsor determines, no later than the last day of that plan year, that: (1) All reasonable measures to avoid insolvency have been and continue to be taken, and (2) the plan is projected to become insolvent unless the suspension of benefits continues (or another suspension of benefits under section 432(e)(9) is implemented) for the plan. One commenter suggested that the language in the 2015 regulations was not clear as to what should occur in the event a plan's finances worsen significantly after a suspension is implemented, so that even if the maximum permissible suspension were implemented the plan would not be able to avoid insolvency. The commenter presented one potential interpretation, in which the worsened financial situation would prohibit the plan sponsor from making the required annual determination, and, as a result, the suspension could not remain in effect. The commenter observed that it would be illogical to interpret this requirement to mean that a plan sponsor could not meet the required certification in such a case, resulting in an end to the suspension. This was not the intent of the 2015 regulations. Accordingly, the final regulations clarify that the standard for this determination (as well as the initial plan sponsor determination) is whether, absent a suspension of benefits, the plan would not be projected to avoid insolvency.

As under the 2015 regulations, the final regulations require that the projection of the plan's avoidance of insolvency must be made using the standards that apply for purposes of determining whether a suspension is sufficient to avoid insolvency, as described in section V.B.1 of this preamble. The final regulations provide that the plan sponsor must maintain a written record of its annual determinations in order to satisfy the annual plan sponsor determinations requirement. This written record must be included in an update to the rehabilitation plan (described in § 432(e)(3)), whether or not there is otherwise an update for that year or, if the plan is no longer in critical status, in the documents under which the plan is maintained (so that it is available to plan participants and beneficiaries). The plan sponsor's consideration of factors required for its determination of whether all reasonable measures have been taken must be reflected in that written record.

The final regulations provide that if a plan sponsor fails to satisfy the annual plan sponsor determinations requirement for a plan year (including maintaining the written record), then the suspension of benefits expires as of the first day of the next plan year. For example, if, in a plan year, the plan sponsor is unable to determine that all reasonable measures to avoid insolvency have been taken, then the plan sponsor must take those additional reasonable measures before the end of the plan year (and reflect those measures in the written record accordingly) in order to avoid the expiration of the suspension as of the first day of the next plan year.

If there is favorable actuarial experience, so that the plan could avoid insolvency even if the benefit suspension were reduced (but not eliminated), the plan sponsor may wish to adopt a benefit increase that partially restores suspended benefits in order to share that favorable experience with the participants. Section 432(e)(9)(E) sets forth the requirements for such a partial restoration of suspended benefits and for other benefit improvements. If favorable actuarial experience would allow the plan to avoid insolvency if the benefit suspension were eliminated entirely, the plan sponsor would be unable to make the determination that a suspension is necessary to avoid insolvency. In such a case, the plan sponsor's inability to make the annual plan sponsor determination would require the plan sponsor to eliminate the suspension as of the first day of the next plan year.

V. Limitations on Suspensions

The final regulations generally adopt the individual and aggregate limitations on a suspension of benefits under section 432(e)(9)(D) as provided under the 2015 regulations, with minor clarifications. The regulations provide that after applying the individual limitations, the overall size and distribution of the suspension is subject to the aggregate limitations.

A. Individual Limitations on Suspensions

1. Guarantee-Based Limitation

The final regulations provide that the monthly benefit payable to a participant, beneficiary, or alternate payee may not be less than 110 percent of the monthly benefit that would be guaranteed by PBGC under section 4022A of ERISA if the plan were to become insolvent as of the effective date of the suspension (the guarantee-based limitation). Under section 4022A(c)(1) of ERISA, that guaranteed amount is a dollar amount multiplied by the participant's years and months of credited service as of the relevant date (in this case, the effective date of the suspension). The dollar amount is 100 percent of the accrual rate up to $11 per month, plus 75 percent of the lesser of (1) $33, or (2) the accrual rate, if any, in excess of $11. The accrual rate is a participant's or beneficiary's monthly benefit (described in section 4022A(c)(2)(A) of ERISA) divided by the participant's years of credited service (described in section 4022A(c)(3) of ERISA) as of the effective date of the suspension. The final regulations include examples demonstrating how the PBGC guarantee is calculated, which reflect PBGC's interpretation of section 4022A of ERISA.

In determining the participant's monthly benefit for purposes of the accrual rate, only nonforfeitable benefits (other than benefits that become nonforfeitable on account of plan termination) are taken into account, pursuant to section 4022A(a) of ERISA. The final regulations treat benefits that are forfeitable on the effective date of a suspension as nonforfeitable, provided the participant is in covered employment on that date and would have a nonforfeitable right to those benefits upon completion of vesting service following that date. For example, if an active participant had only three out of five years of service necessary for the participant's benefit to become 100 percent vested under a plan as of the effective date of a suspension, the participant's accrued benefit will be treated as 100 percent vested as of that date.

2. Disability-Based Limitation

The final regulations incorporate the statutory requirement that benefits based on disability as defined under the plan may not be suspended. Like the 2015 regulations, the final regulations provide that the term "benefits based on disability" means the entire amount paid by the plan to a participant pursuant to the participant becoming disabled, regardless of whether a portion of that amount would have been paid if the participant had not become disabled. For example, assume that a participant with an accrued benefit of $1,000 per month, payable at age 65, becomes entitled under the plan to a benefit in that amount beginning at age 55 on account of a disability (as defined in the plan) and elects to commence that benefit. Under the plan, absent disability, the participant would have been entitled only to a reduced early retirement benefit of $600 per month commencing at age 55, but the reduction for early retirement does not apply because the participant has elected to commence a benefit on account of a disability. The participant's entire benefit payment of $1,000 per month commencing at age 55 is a benefit based on disability, even though the participant would have received a portion of these benefits at retirement regardless of the disability.

The final regulations provide that if a participant begins receiving an auxiliary or other temporary disability benefit and the sole reason the participant ceases receiving that benefit is commencement of retirement benefits, the benefit based on disability after commencement of retirement benefits is the lesser of: (1) The periodic payment the participant was receiving immediately before the participant's retirement benefits commenced, or (2) the periodic payment to the participant of retirement benefits under the plan.

For example, assume that a participant begins receiving a disability benefit under the plan of $1,000 per month payable at age 55. When the participant attains age 65, the participant's disability benefit is discontinued and the participant elects to commence payment of the participant's accrued benefit in the form of an actuarially equivalent joint and survivor annuity payable in the amount of $850 per month. Alternatively, if the participant had elected to commence payment of the participant's accrued benefit in the form of a single life annuity, the amount payable would be $1,000 per month. The benefit based on disability is $1,000 per month before age 65 and, depending on the participant's election, either $850 per month or $1,000 per month beginning at age 65. A suspension of benefits is not permitted to apply to any portion of those benefits at any time.

A number of commenters suggested that benefits based on disability should also include retirement benefits elected by participants who, despite qualifying for benefits based on disability under the plan, elected retirement benefits that were greater than the disability benefits available under the plan. The final regulations do not adopt this suggestion because the disability-based limitation applies only to benefits based on disability (as defined under the plan). Accordingly, because these individuals did not elect disability benefits under the plan, they are not considered to have benefits based on disability for purposes of the disability-based limitation. Similarly, the beneficiary of an individual who had benefits based on disability is not considered to be receiving benefits based on disability under the plan for purposes of the disability-based limitation. Nonetheless, a plan sponsor is permitted to use a broader definition of disability (or to protect beneficiaries of disabled individuals) when designing a suspension of benefits, provided that the suspension otherwise meets the applicable requirements. The regulations include examples of such suspension designs, including a new example that is discussed in section V.B.4 of this preamble.

3. Age-Based Limitation

The final regulations generally adopt the provisions of the 2015 regulations with respect to the age-based limitations with minor clarifications. The final regulations provide that no suspension of benefits is permitted to apply to a participant or beneficiary who has commenced receiving benefits as of the effective date of the suspension and has attained age 80 no later than the end of the month that includes the effective date of the suspension. For example, if a suspension of benefits has an effective date of December 1, 2017, then the suspension cannot apply to the monthly benefit of a retiree who is 79 on December 1, 2017 and who attains age 80 on December 15, 2017. In addition, the final regulations provide that no more than the applicable percentage of the maximum suspendable benefit may be suspended for a participant or beneficiary who has commenced receiving benefits as of the effective date of the suspension and has reached age 75 by the end of the month that includes the effective date of the suspension.

The final regulations provide that the maximum suspendable benefit is the portion of an individual's benefits that would be suspended without regard to the age-based limitation, after the application of the guarantee-based limitation and the disability-based limitation, described earlier in this preamble.

The applicable percentage is the percentage obtained by dividing: (1) The number of months during the period beginning with the month after the month in which the suspension of benefits is effective and ending with the month during which the participant or beneficiary attains the age of 80, by (2) 60.

The final regulations explain how to apply the age-based limitation if benefits have not commenced to either a participant or beneficiary as of the effective date of the suspension. If the participant is alive on the effective date, the participant is treated as having commenced benefits on the effective date. If the participant is deceased on the effective date, the beneficiary is treated as having commenced benefits on the effective date.

The final regulations provide that if the age-based limitation applies to a participant on the effective date of the suspension then the age-based limitation also applies to the beneficiary of the participant. For purposes of this rule, the age-based limitation applies to the beneficiary based on the age of the participant as of the end of the month that includes the effective date of the suspension.

The final regulations provide that the age-based limitation applies to a suspension of benefits in which an alternate payee has an interest, whether or not the alternate payee has commenced benefits as of the effective date of the suspension. If the alternate payee's right to the suspended benefits derives from a qualified domestic relations order within the meaning of section 414(p)(1)(A) (QDRO) under which the alternate payee shares in each benefit payment but the participant retains the right to choose the time and form of payment with respect to the benefit to which the suspension applies (shared payment QDRO), the final regulations provide that the applicable percentage for the alternate payee is calculated by using the participant's age as of the end of the month that includes the effective date of the suspension. If the alternate payee's right to the suspended benefits derives from a QDRO under which the alternate payee has a separate right to receive a portion of the participant's retirement benefit to be paid at a time and in a form different from that chosen by the participant (separate interest QDRO), the final regulations provide that the applicable percentage for the alternate payee is calculated by substituting the alternate payee's age as of the end of the month that includes the effective date of the suspension for the participant's age.

The provisions of the final regulations regarding the age-based limitation are generally the same as provisions of the 2015 regulations, except that the final regulations clarify that, with respect to a benefit payable to a beneficiary or alternate payee the relevant date for determining the age of a participant, beneficiary, or alternate payee, as applicable, is the end of the month that includes the effective date of the suspension, rather than the effective date of the suspension.

B. Aggregate Limitations

1. Suspension Necessary To Avoid Insolvency

The final regulations reflect the statutory requirement in section 432(e)(9)(D)(iv) that any suspension of benefits in the aggregate (considered, if applicable, in combination with a partition of the plan) must be at a level that is reasonably estimated to enable the plan to avoid insolvency. With respect to this requirement, the final regulations are the same as the 2015 regulations, with a minor clarification.

The final regulations provide that a suspension of benefits (considered, if applicable, in combination with a partition of the plan) satisfies the requirement that it is at a level that is reasonably estimated to enable the plan to avoid insolvency if: (1) For each plan year throughout an extended period beginning on the first day of the plan year that includes the effective date of the suspension, the plan's solvency ratio is projected on a deterministic basis to be at least 1.0; (2) based on stochastic projections reflecting variance in investment return, the probability that the plan will avoid insolvency throughout the extended period is more than 50 percent; and (3) unless the plan's projected funded percentage at the end of the extended period using the deterministic projection exceeds 100 percent, the projection shows that during each of the last five plan years of that period, neither the plan's solvency ratio nor its available resources is projected to decrease.[5] In the case of a plan that is not large enough to be required to select a retiree representative (that is, a plan with fewer than 10,000 participants), the stochastic projection is not required.

For these purposes, a plan's solvency ratio for a plan year means the ratio of the plan's available resources for the plan year to the scheduled benefit payments under the plan for the plan year. An extended period means a period of at least 30 plan years. However, in the case of a temporary suspension of benefits that is scheduled to cease as of a date that is more than 25 years after the effective date of the suspension, the extended period must be lengthened so that it ends no earlier than five plan years after the cessation of the suspension.

2. Suspension Not Materially in Excess of Level Necessary To Avoid Insolvency

The final regulations provide rules for applying the statutory requirement under section 432(e)(9)(D)(iv) that any suspension of benefits must be at a level that does not materially exceed the level necessary to enable the plan to avoid insolvency. Under the 2015 regulations, a proposed suspension of benefits would satisfy this requirement only if an alternative, similar but smaller, suspension of benefits would not be sufficient to enable the plan to satisfy the requirement that the suspension be at a level that is reasonably estimated to enable the plan to avoid insolvency. This alternative suspension would be one under which the dollar amount of the suspension for each participant and beneficiary is reduced by five percent.

For example, if, under the original proposed suspension, a participant's benefit were reduced by $1,400, from $3,000 per month to $1,600 per month, then the amount of the alternative similar, but smaller suspension would be $1,330 ($1,400 minus 5% of $1,400) and the resulting monthly benefit would be $1,670 ($3,000 minus $1,330). As another example, if, under the original proposed suspension, a participant's benefit were reduced by $500, from $3,000 per month to $2,500 per month, then the amount of the alternative similar, but smaller suspension would be $475 ($500 minus 5% of $500) and the resulting monthly benefit would be $2,525 ($3,000 minus $475).

The use of five percent for this purpose is roughly comparable to the common use in accounting standards of a five-percent threshold for materiality and strikes a balance between two policy concerns raised by commenters. One concern is that, if a suspension ultimately proves larger than necessary to avoid insolvency, then a smaller suspension could have preserved the solvency of the plan while imposing less onerous benefit cuts. Another concern is that, if a suspension proves insufficient to allow the plan to avoid insolvency, then a second suspension may be needed. The margin by which a suspension can exceed the amount necessary to avoid insolvency while not materially exceeding that amount reflects a balancing of these two concerns. Some commenters maintained that the five-percent margin in the 2015 regulations is too large and would have the effect of permitting excessive suspensions. Other commenters maintained that the five-percent margin is too narrow, especially in the case of a smaller benefit suspension, because a narrow margin increases the risk that actuarial losses will cause a suspension to prove insufficient for the plan to avoid insolvency.

After consideration of these comments, the Treasury Department and the IRS believe that a five percent margin generally strikes a reasonable balance between the competing policy concerns, but that a better balance between these policy concerns is achieved by increasing the margin in the case of a suspension below a certain size. Accordingly, the final regulations modify this standard by adding a floor to the five-percent margin of two percent of the periodic payment determined without regard to the proposed reduction, a change which will increase the margin in the case of a somewhat smaller benefit suspension. Thus, under the final regulations the alternative, similar but smaller suspension that is used for this purpose is one in which the amount of the proposed reduction in the periodic payment (determined after application of the individual limitations) is decreased (but not below zero) by the greater of five percent of the proposed reduction or two percent of the periodic payment determined without regard to the proposed reduction. Applying this standard to the earlier example under which a participant's benefit was reduced by $500, from $3,000 per month to $2,500 per month, then the amount of the alternative, similar but smaller suspension would be $440 ($500 minus 2% of $3,000), rather than $475 ($500 minus 5% of $500), and the resulting monthly benefit would be $2,560 ($3,000 minus $440), rather than $2,525. Thus, the difference between the monthly benefit under proposed suspension and the monthly benefit under the alternative, similar but smaller suspension would be $60 (rather than $25).

In addition, the final regulations clarify that the extended period used to demonstrate that the proposed suspension does not materially exceed the level that is reasonably estimated to enable the plan to avoid insolvency must be no shorter than the period used for the demonstration that the proposed suspension is reasonably estimated to avoid insolvency.

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[5] The term "available resources" is defined in section 418E(b)(3). Under that provision, a plan's available resources are generally equal to the beginning-of-year assets adjusted for the expected cash flow for the plan year (other than benefit payments).

3. Actuarial Basis for Projections

The final regulations generally adopt the provisions of the 2015 regulations regarding the actuarial basis for projections, with certain clarifications in response to comments. The final regulations require the actuarial projections used for purposes of these requirements to reflect the assumption that the suspension of benefits continues indefinitely (or, if the suspension expires on a specified date by its own terms, until that date). Further, the final regulations provide that the actuary's selection of assumptions about future covered employment and contribution levels (including contribution base units and average contribution rate) is permitted to be based on information provided by the plan sponsor, which must act in good faith in providing the information. Finally, the final regulations provide that, to the extent that an actuarial assumption used for the projections differs from that used to certify whether the plan is in critical and declining status pursuant to section 432(b)(3)(B)(iv), an explanation of the information and analysis that led to the selection of that different assumption must be provided.

The final regulations clarify the standards that apply to actuarial assumptions to be used in actuarial projections. The 2015 regulations require that the actuarial assumptions and methods used for the actuarial projections be reasonable in accordance with the rules of section 431(c)(3). The final regulations replace that reference with a specific requirement that each of the actuarial assumptions and methods used, and the combination of those actuarial assumptions and methods, must be reasonable, taking into account the experience of the plan and reasonable expectations. This standard is similar to the standard under section 431(c)(3) requiring that each of the actuarial assumptions and methods be reasonable and that the combination of those assumptions and methods offer the actuary's best estimate of anticipated experience.

The final regulations also specify that, to be reasonable, the actuarial assumptions and methods must be appropriate for the purpose of the measurement.[6] This means, among other things, that factors specific to the measurements must be taken into account in selecting the assumptions and methods. These measurements (that is, the cash flow projections) will be used to demonstrate compliance with a requirement that must be satisfied before a plan in critical and declining status is permitted to reduce participant and beneficiary benefits, under circumstances in which the reduction will not automatically be adjusted if actual experience differs from projections. Moreover, such a plan's asset levels typically are projected to decline during the earlier years of the projections, even after reflecting the proposed benefit suspension. For example, actuarial assumptions for the rate of investment return normally would not be appropriate for the purpose of projecting cash flows in order to estimate whether a plan in critical and declining status will avoid insolvency if those assumptions were developed in a manner that fails to take into account the anticipated pattern and magnitude of changes in the level of plan assets during the projection period. This is because the use of an investment return assumption derived from a time-weighted average of the expected rates of return for the entire projection period would not result in an appropriate projection of the expected dollar amount of investment return over that period to the extent anticipated rates of return are expected to be smaller or larger during the portion of that period when the level of plan assets is expected to be relatively higher. Thus, it would not be appropriate to develop an actuarial assumption for the rate of investment return based solely on long-term expectations without taking these differences into account.[7]

Like the 2015 regulations, the final regulations require cash flow projections to be based on the fair market value of assets as of the end of the calendar quarter immediately preceding the date the application is submitted, projected benefit payments that are consistent with the projected benefit payments under the most recent actuarial valuation, and appropriate adjustments to projected benefit payments to include benefits for new hires that are reflected in the projected contribution amounts. The final regulations provide that the projected cash flows relating to contributions, withdrawal liability payments, and benefit payments must also be adjusted to reflect significant events that occurred after the most recent actuarial valuation. For this purpose, significant events include: (1) A plan merger or transfer; (2) the withdrawal or the addition of employers that changed projected cash flows relating to contributions, withdrawal liability payments, or benefit payments by more than five percent; (3) a plan amendment, a change in a collective bargaining agreement, or a change in a rehabilitation plan that changed projected cash flows relating to contributions, withdrawal liability, or benefit payments by more than five percent; or (4) any other event or trend that resulted in a material change in those projected cash flows.

A number of comments were received regarding the actuarial projections required as part of the application for suspension. As described subsequently, these projections include not only a demonstration that the plan would avoid insolvency but also a demonstration of what would happen if the plan were to have less favorable experience, such as a lower investment return.

Some commenters thought too much information was required, resulting in the expenditure of excessive time and plan resources. Others thought too little information was required and suggested requiring additional information (such as the extent to which contributions are used to pay for past benefits rather than for current accruals). The Treasury Department and the IRS have reviewed these comments and have concluded that this information is valuable to the Treasury Department for purposes of evaluating whether a suspension is reasonably estimated to enable the plan to avoid insolvency. This information is also informative for participants and beneficiaries in deciding whether to vote to accept or reject the suspension.[8] The value of this information to the Treasury Department and to participants and beneficiaries outweighs the burden of providing this information. Accordingly, no changes have been made to the regulations with respect to the scope of the required actuarial projections.

Under the final regulations, an application for suspension must include a disclosure of the total contributions, total contribution base units and average contribution rate, withdrawal liability payments, and the rate of return on plan assets for each of the 10 plan years preceding the plan year in which the application is submitted. In addition, an application must include an illustration, prepared on a deterministic basis, of the projected value of plan assets, the accrued liability of the plan (calculated using the unit credit funding method), and the funded percentage for each year in the extended period.

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[6] Actuarial Standards of Practice (ASOPs) are issued by the Actuarial Standards Board and are available at *http://www.actuarialstandardsboard.org/standards-of-practice*. Certain ASOPs, including ASOPs Nos. 4, 27, and 35, are relevant to the actuary's selection of assumptions.

[7] Methods for developing an assumption for the rate of return that would be appropriate for purposes of the measurement include: (1) Using a select and ultimate assumption that includes different assumptions of investment returns for different portions of the projection period, or (2) developing a return assumption based on dollar-weighted returns over the projection period.

[8] For example, a projection demonstrating that the plan would not avoid insolvency if it were to experience a lower rate of return helps participants to understand that the actuarial projections in the application are subject to uncertainty.

The final regulations also require that an application include deterministic projections of the plan's solvency ratio over the extended period using two alternative assumptions that the plan's future rate of return was lower than the assumed rate of return by (1) one percentage point and (2) two percentage points. In addition, the final regulations adopt the provisions from the 2015 regulations that provide that an application must include deterministic projections of the plan's solvency ratio over the extended period using two alternative assumptions for future contribution base units. These alternatives are that future contribution base units: (1) Continue under the same trend as the plan experienced over the past 10 years, and (2) continue under that 10-year trend reduced by one percentage point. However, with respect to calculating the sensitivity of actuarial projections to the assumptions of future contribution base units, the final regulations clarify that it is permissible for the projections to be made without reflecting any adjustments to the projected benefit payments that result from those alternative assumptions regarding future contribution base units.

4. Equitable Distribution of Suspension

The rules under the final regulations regarding the equitable distribution requirement are generally the same as the rules under the 2015 regulations. The final regulations require any suspension of benefits to be equitably distributed across the participant and beneficiary population. If a suspension of benefits provides for different treatment for different participants and beneficiaries, then the suspension of benefits is equitably distributed across the participant and beneficiary population only if: (1) Under the suspension, the participants and beneficiaries are divided into separate categories or groups that are defined by the consistent treatment of individuals within each separate category or group; (2) any difference in the treatment under the suspension among the different categories or groups is based on relevant factors reasonably selected by the plan sponsor; and (3) any such difference in treatment is based on a reasonable application of those relevant factors. With respect to a reasonable application of the relevant factors, the final regulations provide that it would be unreasonable to apply a factor or factors in a manner that is inconsistent with the protections provided by the individual limitations under section 432(e)(9)(D), such as protections for older individuals or individuals with benefits that are closer to the PBGC guarantee level.

The final regulations contain new rules to clarify when different groups of participants and beneficiaries are treated as separate categories or groups for purposes of applying the equitable distribution requirement in the case of a proposed suspension of benefits under which an individual's benefits after suspension are calculated under a new benefit formula (rather than by reference to an individual's benefits before suspension). In this case, the evaluation of whether the proposed suspension is equitably distributed across the participant and beneficiary population is based on a comparison of an individual's pre-suspension benefit to the individual's post-suspension benefit (determined without regard to the application of the individual limitations). Accordingly, all individuals whose pre-suspension benefits are determined under a uniform pre-suspension benefit formula and whose post-suspension benefits are determined under a different uniform post-suspension benefit formula are treated as a single group. The final regulations clarify the application of this rule in the case of different pre-suspension benefit formulas with respect to different plan years. In addition, the final regulations clarify that two individuals are not treated as having different pre-suspension or post-suspension benefit formulas merely because, as a result of the application of a uniform set of early retirement factors, their benefits differ because of retirement at different ages.

The final regulations include a number of examples that illustrate the equitable distribution rules, most of which were included in the 2015 regulations. One new example illustrates that plan sponsors may consider factors other than the statutory factors in determining whether a distribution of the suspension is equitable, provided that the factor is consistent with the general conditions and limitations required for a suspension to satisfy section 432(e)(9).[9] Under this example, a plan sponsor applies a smaller reduction to individuals who are receiving disability benefits under the Social Security Act (even though they are not receiving benefits based on disability under the plan) than to similarly situated individuals. The example concludes that, under the facts, the suspension of benefits is equitably distributed. Although this example illustrates a suspension under which individuals receiving Social Security disability benefits receive favorable treatment (which is a standard that is easily administrable), a suspension could instead be designed using another reasonable definition of disability for this purpose.

5. Specific Limitation on Suspension for Certain Plans

The final regulations reserve a paragraph for rules relating to the application of section 432(e)(9)(D)(vii), which contains a specific limitation on how a suspension of benefits must be applied under a plan that includes benefits that are directly attributable to a participant's service with any employer that has, prior to December 16, 2014, withdrawn from the plan in a complete withdrawal under section 4203 of ERISA, paid the full amount of the employer's withdrawal liability under section 4201(b)(1) of ERISA or an agreement with the plan, and, pursuant to a collective bargaining agreement, assumed liability for providing benefits to participants and beneficiaries of the plan under a separate, single-employer plan sponsored by the employer, in an amount equal to any amount of benefits for these participants and beneficiaries reduced as a result of the financial status of the plan. The Treasury Department and the IRS expect to adopt final regulations under section 432(e)(9)(D)(vii) after consideration of comments received in response to the 2016 regulations and the public hearing on those regulations.

VI. Benefit Improvements

The final regulations generally adopt the provisions set forth in the 2015 regulations for the application of section 432(e)(9)(E), regarding benefit improvements. Under the final regulations, a plan satisfies the criteria in section 432(e)(9)(E) only if, during the period that any suspension of benefits remains in effect, the plan sponsor does not implement any benefit improvement except as provided in the final regulations.

The final regulations define the term benefit improvement to mean, with respect to a plan, a resumption of suspended benefits, an increase in benefits, an increase in the rate at which benefits accrue, or an increase in the rate at which benefits become nonforfeitable under the plan. In the case of a suspension of benefits that expires as of a date that is specified in the original plan amendment providing for the suspension, the resumption of benefits solely from the expiration of that period is not treated as a benefit improvement.

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[9] Thus, a suspension is permitted to provide for different treatment of participants whose employers are in different withdrawal liability pools that have been approved by PBGC.

A. Limitations on Benefit Increases for Those Not in Pay Status

The final regulations provide that, during the period any suspension of benefits under a plan remains in effect, the plan sponsor may not increase the liabilities of the plan by reason of any benefit improvement for any participant or beneficiary who was not in pay status by the first day of the plan year for which the benefit improvement takes effect, unless several conditions are satisfied.

The final regulations include conditions that must be satisfied for the benefit improvement to take effect. The final regulations require that the present value of the total liabilities for a benefit improvement for participants and beneficiaries in pay status (that is, those whose benefit commencement dates occurred before the first day of the plan year for which the benefit improvement takes effect) is not less than the present value of the total liabilities for a benefit improvement for participants and beneficiaries who were not in pay status by that date. For this purpose, the final regulations provide that the present value is the present value as of the first day of the plan year in which the benefit improvement is proposed to take effect and clarify that the actuarial assumptions and methods used for the actuarial projections that are required must each be reasonable, and the combination of the actuarial assumptions and methods must be reasonable, taking into account the experience of the plan and reasonable expectations. In addition, the final regulations clarify that, in the case of a benefit increase that is an increase in the rate of future accrual, the calculation of present value of the liabilities for the benefit improvements must take into account the increase in accruals for current participants for all future years.

As under the 2015 regulations, the final regulations require that the plan sponsor must also equitably distribute the benefit improvement among participants and beneficiaries whose benefit commencement dates occurred before the first day of the plan year in which the benefit improvement is proposed to take effect. The evaluation of whether a benefit improvement is equitably distributed must take into account the factors relevant to whether a suspension of benefits is equitably distributed, described elsewhere in this preamble, and the extent to which the benefits of the participants and beneficiaries were suspended.

Pursuant to section 432(e)(9)(E)(i)(II), the final regulations require the plan actuary to certify that, after taking into account the benefit improvement, the plan is projected to avoid insolvency indefinitely. The final regulations require that this certification be made using the standards that apply for purposes of determining whether a suspension is sufficient to avoid insolvency that are described in this preamble.

The final regulations provide that these limitations do not apply to a resumption of suspended benefits or plan amendment that increases liabilities with respect to participants and beneficiaries not in pay status by the first day of the plan year in which the benefit improvement took effect that: (1) The Treasury Department, in consultation with PBGC and the Labor Department, determines to be reasonable and which provides for only *de minimis* increases in plan liabilities, or (2) is required as a condition of qualification under section 401 or to comply with other applicable law, as determined by the Treasury Department.

B. Limitations on Benefit Increases for Those in Pay Status

Under final regulations, as under the 2015 regulations, the plan sponsor may increase liabilities of the plan by eliminating some or all of the suspension that applies solely to participants and beneficiaries in pay status at the time of the resumption, provided that the plan sponsor equitably distributes the value of those resumed benefits among participants and beneficiaries in pay status, taking into account factors relevant to whether a suspension of benefits is equitably distributed. Such a resumption of benefits is not subject to the limitations on a benefit improvement under section 432(f) (relating to restrictions on benefit increases under plans in critical status).

C. Other Limitations on Benefit Increases

The final regulations provide that the limitations on benefit improvements generally apply in addition to other limitations on benefit increases that apply to a plan. These limitations on benefit improvements are in addition to the limitations in section 432(f) and any other applicable limitations on increases in benefits imposed on a plan. These limitations on benefit improvements do not apply in the case of benefits paid following the scheduled expiration of a temporary suspension of benefits.

One commenter asked that benefit improvements under other plans be treated in the same manner as benefit improvements under the plan at issue for purposes of satisfying the requirement that retirees be given at least as much as active participants with respect to benefit improvements. Such a requirement would not be consistent with the terms of section 432(e)(9)(E), and, therefore, the final regulations do not adopt this suggestion. However, any actions that increase liabilities with respect to a group or groups of individuals subject to the suspension, even if under another plan, would result in a use of resources that must be taken into account in the annual plan sponsor determination of whether all reasonable measures have been and continue to be taken to avoid insolvency.

VII. Notice of Proposed Suspension

Section 432(e)(9)(F)(iii) states that notice must be provided in a form and manner prescribed in guidance and that notice may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to persons to whom the notice is required to be provided.

The final regulations prescribe rules implementing the statutory notice requirements in section 432(e)(9)(F) that are generally the same as the rules set forth in the 2015 regulations. The final regulations require the plan sponsor to provide notice of a proposed suspension to: (i) All plan participants, beneficiaries of deceased participants, and alternate payees (regardless of whether their benefits are proposed to be suspended), except those who cannot be contacted by reasonable efforts; (ii) each employer that has an obligation to contribute (within the meaning of section 4212(a) of ERISA) under the plan; and (iii) each employee organization that, for purposes of collective bargaining, represents plan participants employed by such an employer.

The 2015 regulations contain two examples illustrating the efforts that constitute reasonable efforts to contact individuals for purposes of this notice requirement. In response to comments, these examples have been modified in the final regulations to describe in more detail the steps taken to locate participants whose notices were returned as undeliverable. These steps include contacting administrators of any other employee benefit plans (such as, to the extent such contact is permitted under applicable law, the administrators of a health fund or an apprenticeship training fund) for contact information regarding a missing individual. As in the 2015 regulations, these examples demonstrate that it is not sufficient to merely send notices to the individuals' last known mailing addresses.

The final regulations state that, to satisfy the statutory requirement that the notice contain sufficient information to enable plan participants and beneficiaries to understand the effect of the suspension of benefits, the notice must contain the following items:

- An individualized estimate, on an annual or monthly basis, of the effect of the suspension on the participant or beneficiary. However, to the extent it is not possible to provide an individualized estimate on an annual or monthly basis of the quantitative effect of the suspension on the participant or beneficiary, such as in the case of a suspension that affects the payment of a future cost-of-living adjustment, that effect may be reflected in a narrative description;
- A statement that the plan sponsor has determined that the plan will become insolvent unless the proposed suspension (and, if applicable, the proposed partition) takes effect, and the year in which insolvency is projected to occur without a suspension of benefits (and, if applicable, a proposed partition);
- A statement that insolvency of the plan could result in benefits lower than benefits paid under the proposed suspension and a description of the projected benefit payments upon insolvency;
- A description of the proposed suspension and its effect, including a description of the different categories or groups affected by the suspension, how those categories or groups are defined, and the formula that is used to calculate the amount of the proposed suspension for individuals in each category or group;
- A description of the effect of the proposed suspension on the plan's projected insolvency;
- A description of whether the suspension will remain in effect indefinitely or the date the suspension will expire if it will expire by its own terms; and
- A statement describing the right to vote on the suspension application.

The final regulations provide that the notice of proposed suspension may not include false or misleading information (or omit information so as to cause the information provided to be misleading). The notice is permitted to include additional information, including information relating to an application for partition under section 4233 of ERISA, provided that it satisfies the requirement to not provide false or misleading information.

The notice of proposed suspension must be written in a manner so as to be understood by the average plan participant.[10] The regulations provide that the Treasury Department will provide a model notice. The use of the model notice will satisfy the content requirement and the readability requirement with respect to the language provided in the model.

The final regulations provide that notice may be provided in writing. It may also be provided in electronic form to the extent that the form is reasonably accessible to persons to whom the notice is required to be provided. Permissible electronic methods include those permitted under regulations of the Department of Labor at 29 CFR 2520.104b–1(c) and those described at § 54.4980F–1, Q&A–13(c) of the Excise Tax Regulations.

Section 432(e)(9)(F) provides that the notice of proposed suspension must be given "concurrently" with the submission of an application to the Treasury Department, but does not specify a precise timeframe for satisfying this requirement. An interpretation that "concurrently" means either simultaneously or on the same day was rejected because it would require the difficult synchronization of the plan sponsor's electronic submission of its application and its giving of notice in written and/or in electronic form. As described in section VIII of this preamble, the final regulations require a plan sponsor to submit its application electronically, but, as described previously in this section of the preamble, the final regulations also allow a plan sponsor to give notice by mail. Therefore, the final regulations interpret "concurrently" to permit the sponsor to provide written notice a few days earlier than the electronic submission of the application (in order for the mailed notice and application to be received on or about the same date). The final regulations thus permit a plan sponsor to give notice no earlier than four business days before the submission of its application.

The final regulations also provide that a plan sponsor is permitted to give written notice no later than two business days after the Treasury Department notifies the plan sponsor that it has submitted a complete application. This allows a plan sponsor a maximum of four business days following its submission of an application to provide the required notices. This four-business-day period of time enables the Treasury Department to make a preliminary completeness check of the application during the first two business days, and the plan sponsor two business days thereafter to give the required notices.[11] This approach will help participants by minimizing the risk of confusion and plan expense. For example, if a plan sponsor submits an incomplete application, compiles the additional information, and then finds the individualized estimates that the plan sponsor already gave to be inaccurate (or simply takes too long to compile the additional information), the plan sponsor would have to re-send the notices, increasing the likelihood that the notice would not be understood by the average plan participant as a result of receiving two different notices, each with a different individualized estimate. The Treasury Department encourages plan sponsors to delay giving notice until after the Treasury Department provides notification that the application is complete. If additional individuals who are entitled to notice are located after the deadline for providing notice then the plan sponsor must give those newly located individuals notice as soon as practicable after they are located.

In accordance with section 432(e)(9)(F)(iv), the final regulations provide that a notice of proposed suspension satisfies the requirement for notice of a significant reduction in benefits described in section 4980F that would otherwise be required as a result of that suspension of benefits. To the extent that other reductions accompany a suspension of benefits, such as a reduction in the future accrual rate described in section 4980F for active participants or a reduction in adjustable benefits under section 432(e)(8), notice that satisfies the requirements (including the applicable timing requirements) of section 4980F or section 432(e)(8), as applicable, must be provided.

VIII. Approval or Denial of an Application for Suspension of Benefits

The final regulations generally adopt the provisions of the 2015 regulations under which the plan sponsor of a plan in critical and declining status for a plan year that seeks to suspend benefits must submit an application for approval of the proposed suspension of benefits to the Treasury Department. The Treasury Department, in consultation with PBGC and the Labor Department, will approve a complete application upon finding that: (1) The plan is eligible for the suspension; (2) the plan actuary and plan sponsor have satisfied the requirements of section 432(e)(9)(C), (E), and (F); and (3) the design of the suspension satisfies the criteria of section 432(e)(9)(D). The Treasury Department's approval of the design of the suspension of benefits does not constitute approval of any individual benefit calculation for any participant or beneficiary.

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[10] See 29 CFR 2520.102–2 of the Department of Labor regulations for rules under a similar standard applicable to summary plan descriptions.

[11] The completeness check is described in section VIII of this preamble.

The final regulations provide that additional guidance that may be necessary or appropriate with respect to applications, including procedures for submitting applications and the information required to be included in a complete application, may be issued in the form of revenue procedures, notices, or other guidance published in the Internal Revenue Bulletin. The guidelines and procedures for submitting an application that were set forth in Rev. Proc. 2015–34 have been updated in Rev. Proc. 2016–xx.

The final regulations provide that a complete application will be deemed approved unless, within 225 days after a complete application is received, the Treasury Department notifies the plan sponsor that its application does not satisfy one or more of the requirements for approval. The final regulations provide that, if necessary under the circumstances, the Treasury Department and the plan sponsor may mutually agree in writing to stay the 225-day period. It is expected that any such agreement would be entered into only in unusual circumstances.

The final regulations provide, as required by section 432(e)(9)(G)(iv), that, in evaluating whether the plan sponsor has satisfied the condition (in section 432(e)(9)(C)(ii)) that it determine that all reasonable measures to avoid insolvency within the meaning of section 418E have been taken, the Treasury Department, in consultation with PBGC and the Labor Department, will review the plan sponsor's consideration of each of the factors enumerated in section 432(e)(9)(C)(ii) and each other factor it took into account in making that determination. The final regulations do not require the plan sponsor to take any particular measure or measures to avoid insolvency but do require, in the aggregate, that the plan sponsor take all reasonable measures to avoid insolvency. As required by section 432(e)(9)(G)(v), in evaluating a plan sponsor's application, the Treasury Department will accept the plan sponsor's determinations under section 432(e)(9)(C)(ii), unless the Treasury Department concludes, in consultation with PBGC and the Labor Department, that the determinations were clearly erroneous. This statutory structure reflects the view that particular measures to avoid insolvency may be inappropriate for some plans and requires the Treasury Department to review the plan sponsor's consideration of the appropriateness of each of the statutory factors, but recognizes that the plan sponsor is generally in a better position than the Treasury Department to determine the most effective measures that a particular plan should take to avoid insolvency.

The final regulations provide that an application to suspend benefits will not be approved unless the plan sponsor certifies that, if it receives final authorization to suspend benefits, chooses to implement the suspension, and adopts a plan amendment to implement the suspension, it will timely amend the plan to provide that: (1) The suspension of benefits will cease as of the first day of the first plan year following the first plan year in which the plan sponsor fails to make the annual determinations in section 432(e)(9)(C)(ii), and (2) any future benefit improvement must satisfy the section 432(e)(9)(E) rules for benefit improvements.

An application must be submitted electronically in a searchable format. The final regulations provide that, after receiving a submission, the plan sponsor will be notified within two business days whether the submission constitutes a complete application. If the submission is a complete application, the application will be treated as submitted on the date it was originally submitted to the Treasury Department. If a submission is incomplete, the notification will inform the plan sponsor of the information that is needed to complete the submission and give the plan sponsor a reasonable opportunity to submit a complete application. In such a case, the complete application will be treated as submitted on the date the additional information needed to complete the application is submitted to the Treasury Department.

The final regulations provide that in the case of a plan sponsor that is not submitting an application for suspension in combination with an application to PBGC for a plan partition, the application for suspension generally will not be accepted unless the proposed effective date of the suspension is at least nine months after the date on which the application is submitted. However, in appropriate circumstances, an earlier effective date may be permitted. Appropriate circumstances could include an application for a proposed suspension that is a revision of a previously proposed suspension.

Some commenters asserted that an earlier effective date of a suspension should be permitted because the size of the benefit cuts pursuant to the suspension might be smaller with an earlier effective date. The purpose of the general nine month requirement is to ensure adequate time to review the proposed suspension without a need to delay the effective date of the proposed suspension. Deferring the original effective date could have other repercussions on the proposed suspension, including confusion for plan participants and beneficiaries. Furthermore, deferring the effective date would change the economics of the suspension. For example, it could result in the application of the age-based limitation to additional participants. This in turn could lead to greater reductions in the benefits of other individuals in order to satisfy the requirement that the suspension, in the aggregate, be reasonably estimated to achieve, but not materially exceed, the level necessary to avoid insolvency. Accordingly, no change has been made in the final regulations to this provision.

In the case of an application for suspension in combination with an application for partition, the impact of a delayed effective date for the suspension would be the potential that PBGC's ability to provide the plan with sufficient financial assistance to keep the plan solvent would be impaired (rather than a redesign of the suspension). Accordingly, the final regulations do not require the proposed effective date of such a suspension to be at least nine months after the date on which the application is submitted.

The final regulations provide that, in any case in which a suspension of benefits with respect to a plan is made in combination with a partition of the plan under section 4233 of ERISA, the suspension of benefits is not permitted to take effect prior to the effective date of the partition. This requirement will not be satisfied if the partition order under section 4233 of ERISA has not been provided to the Treasury Department by the last day of the 225-day review period described in section 432(e)(9)(G)(iii), after which deemed approval of the suspension would occur. The final regulations clarify that a conditional approval by PBGC of a partition application that is conditioned only on the Treasury Department's issuing a final authorization to suspend is treated as a partition order.

The final regulations generally adopt other provisions from the 2015 regulations, with respect to the application process. The final regulations provide that, no later than 30 days after receiving a complete application, the application will be published on the Web site of the Department of the Treasury, and the Treasury Department will publish a notice in the **Federal Register** soliciting comments from contributing employers, employee organizations, and participants and beneficiaries of the plan for which an application was made, and other interested parties. In addition, the final regulations provide that the notice soliciting comments will generally request that comments be submitted no later than 45 days after publication of that notice in the **Federal Register**, but the notice may specify a different deadline for comments in appropriate circumstances. (Circumstances under which a shorter comment period may be appropriate include the receipt of an application for a proposed suspension that is a revision of a previously proposed suspension.) Comments received in response to such a solicitation will be made publicly available.

The final regulations include a new rule that, in appropriate circumstances, the Treasury Department may permit a plan sponsor that has withdrawn an application to submit a revised application for suspension that will be subject to a different review process (referred to in the regulations as the resubmission review process). The Treasury Department will follow the same procedures and apply the same standards in the resubmission review process as in the review of any other application, except: (1) The revised application would be permitted to propose an effective date of the suspension that is less than nine months after the revised application is submitted; (2) the individual and aggregate limitations under section 432(e)(9)(D) may be applied using the same actuarial data (including the same fair market value of the plan assets) as was used in the initial application; and (3) the plan sponsor would be permitted to provide a simplified version of the notice of the revised application to any individual for whom the amount and timing of the proposed suspension under the revised application are the same as under the withdrawn application.

Whether to make the resubmission review process available for a particular application is within the Treasury Department's discretion, in consultation with PBGC and the Labor Department. In determining whether there are appropriate circumstances that warrant the resubmission review process, the Treasury Department will, for example, evaluate whether such resubmission review would enable it to make significant use of its prior analysis of the withdrawn application. Specifically, the Treasury Department expects to take into consideration one or more factors, including: (1) The extent to which the Treasury Department, in consultation with PBGC and the Labor Department, had evaluated the application prior to withdrawal; (2) the amount of time that has or will have elapsed since the submission of the withdrawn application; and (3) the extent to which the experience of the plan has been different than expected since the submission of the withdrawn application, including the extent of changes in the fair market value of plan assets, changes in the number of disabled participants (as defined under the plan), or withdrawals or bankruptcy proceedings filed by employers contributing to the plan.

As under the 2015 regulations, the final regulations provide that if the Treasury Department denies a plan sponsor's application, the notification of the denial will detail the specific reasons for the denial, including reference to the specific requirement not satisfied. If the Treasury Department approves a plan sponsor's application and expects that the plan is a systemically important plan, then the Treasury Department will notify the plan sponsor of that expectation and that the plan sponsor will be required to provide individual participant data and actuarial analysis upon request. This information would be used in the event the vote results in the rejection of the suspension and would assist the Treasury Department in determining whether to permit an implementation of the rejected suspension or a modification of that suspension.

The final regulations provide that the Secretary of the Treasury may appoint a Special Master for purposes of section 432(e)(9). If a Special Master is appointed, the Special Master will be an employee of the Department of the Treasury, will coordinate the implementation of the regulations and the review of applications for the suspension of benefits and other appropriate documents, and will provide recommendations to the Secretary of the Treasury with respect to decisions required under these regulations.

IX. Participant Vote on Proposed Benefit Reduction

A participant vote requires the completion of three steps. First, a package of ballot materials is distributed to eligible voters. Second, the eligible voters cast their votes and the votes are collected and tabulated. Third, the Treasury Department (in consultation with PBGC and the Labor Department) determines whether a majority of the eligible voters has voted to reject the proposed suspension.

A. Eligible Voters and Voting Roster

The 2015 regulations define the term "eligible voters" as all plan participants and all beneficiaries of deceased participants. Some commenters noted that the reference to participants in this provision could be interpreted as referring only to active participants. Accordingly, these final regulations clarify that eligible voters include terminated vested participants and retirees (but not alternate payees).

These final regulations add the term "voting roster" to describe the list of eligible voters to whom the ballot must be sent. The plan sponsor must prepare the voting roster that includes those eligible voters to whom the notices were sent. If there is a plan participant or beneficiary who did not receive a notice but who is subsequently located by the plan sponsor, the final regulations require that individual to be included on the voting roster. Similarly, if an individual becomes a plan participant after the date the notices were sent, then the individual must be included on the voting roster. If a plan sponsor learns that an eligible voter has died, then that deceased individual must not be included on the voting roster (but if that participant has a beneficiary entitled to benefits under the plan, the beneficiary must be included on the roster).

B. Service Provider May Be Designated

As under the 2015 regulations, these final regulations provide that the Treasury Department is permitted to designate a service provider or service providers to facilitate the administration of the vote. The service provider may assist in the steps of distributing the ballot package to eligible voters and collecting and tabulating the votes. If a service provider is designated to collect and tabulate votes, then the service provider will provide the Treasury Department with the report of the results of the vote, which includes an accounting of the number of eligible voters who voted, the number of eligible voters who voted in support of and to reject the suspension, and certain other information.

C. Ballots and Other Plan Sponsor Communications

These final regulations set forth rules regarding the ballot package that is sent to eligible voters and the plan sponsor's responsibilities relating to ballots and related communications to participants and beneficiaries. The final regulations provide that the ballot must be approved by the Treasury Department, in consultation with PBGC and the Labor Department, and that the ballot must be written in a manner that can be readily understood by the average plan participant and may not include any false or misleading information. Under the final regulations, the ballot package sent to eligible voters includes the approved ballot and a voter identification code for each eligible voter. The voter identification code, which is assigned by the Treasury Department or a designated service provider, is intended to ensure the validity of the vote while maintaining the eligible voters' privacy in the voting process.

These final regulations provide guidance on the plan sponsor's statutory requirement to provide a ballot. Because the ballot for each eligible voter is accompanied by a voter identification code, the plan sponsor cannot directly distribute the ballots. Instead, the plan sponsor is responsible for furnishing the voting roster so that the Treasury Department or its designated service provider can distribute the ballots on the plan sponsor's behalf. For each eligible voter on the voting roster, the plan sponsor must include the last known mailing address (except with respect to those eligible voters for whom the last known mailing address is known to be incorrect). The plan sponsor must also provide a list of eligible voters whom the plan sponsor has been unable to locate using reasonable efforts. In addition, the plan sponsor must furnish current electronic mailing addresses for certain eligible voters (that is, those who received the notice of the proposed suspension under section 432(e)(9)(F) in electronic form and those who regularly receive plan-related electronic communications from the plan sponsor). The plan sponsor must also furnish the individualized estimates provided to eligible voters as part of the earlier notices described in section 432(e)(9)(F) (or, if an individualized estimate is no longer accurate for an eligible voter, a corrected version of that estimate) so that an individualized estimate can be included with the ballot for each eligible voter. These final regulations add a requirement for the plan sponsor to provide plan information (such as participant identification codes used by the plan) to enable the Treasury Department to verify the identity of each eligible voter, in order to ensure the integrity of the voting process. These materials must be provided no later than seven days after the date the Treasury Department has approved an application for a suspension of benefits.

Section 432(e)(9)(H)(iii) requires a plan sponsor to provide a ballot. These final regulations adopt the interpretation set forth in the 2015 regulations that, under this statutory requirement, the plan sponsor is responsible for the costs of providing the ballot package to eligible voters, including the costs associated with printing, assembling, and mailing those ballot packages.

The final regulations provide that ballot packages will be distributed to eligible voters by first-class U.S. mail. A supplemental copy of the ballot package that includes the same content as the mailed ballot package may also be sent by an electronic communication to an eligible voter who has consented to receive electronic notifications. For example, if an eligible voter notifies the Treasury Department or the designated service provider that the mailed ballot package has not been received, then a supplemental copy of the ballot package may be provided by electronic mail.

The final regulations provide guidance regarding the plan sponsor's duty under section 432(e)(9)(H)(iv) to communicate with eligible voters. Under the final regulations, the plan sponsor must notify certain eligible voters (using an electronic communication) that the ballot package will be mailed to them by first-class U.S. mail. The eligible voters who must be notified under this rule are those who received the notice of the proposed suspension under section 432(e)(9)(F) in electronic form and those who regularly receive plan-related electronic communications from the plan sponsor.[12] This notification must be sent promptly after the plan sponsor is informed of the ballot distribution date. This notification in electronic form ensures that those eligible voters who ordinarily expect to receive communications from the plan sponsor in electronic form are aware that a ballot package will arrive via first-class U.S. mail. This notification must be sent by the plan sponsor, rather than the Treasury Department or a service provider, so that the communication comes from a familiar source, which will make it less likely that the communication is filtered from delivery as spam or junk mail.

As previously described in section VII of this preamble, a plan sponsor must make reasonable efforts to contact individuals whose initial suspension notices that were provided by mail were returned as undeliverable. The mailing addresses for the ballot packages that are furnished by the plan sponsor must reflect updates resulting from those reasonable efforts. If ballot packages sent to eligible voters are returned as undeliverable, the plan sponsor must make similar reasonable efforts to locate those eligible voters after being notified that their ballots were returned as undeliverable.

D. Contents of Ballot

The final regulations provide that the ballot must be written in a manner that can be readily understood by the average plan participant and may not include any false or misleading information. The ballot must contain the following information:

- A description of the proposed suspension and its effect, including the effect of the suspension on each category or group of individuals affected by the suspension and the extent to which they are affected;
- A description of the factors considered by the plan sponsor in designing the benefit suspension, including but not limited to the factors in section 432(e)(9)(D)(vi);
- A description of whether the suspension will remain in effect indefinitely or will expire by its own terms (and, if it will expire by its own terms, when that will occur);
- A statement from the plan sponsor in support of the proposed suspension;
- A statement in opposition to the proposed suspension compiled from comments received pursuant to the solicitation of comments in the **Federal Register** notice with respect to the application;
- A statement that the proposed suspension has been approved by the Secretary of the Treasury, in consultation with PBGC and the Secretary of Labor;
- A statement that the plan sponsor has determined that the plan will become insolvent unless the proposed suspension takes effect (including the year in which insolvency is projected to occur without a suspension of benefits), and an accompanying statement that this determination is subject to uncertainty;

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[12] The plan sponsor is also permitted to send this notification to any other eligible voters for whom the plan sponsor has an electronic mailing address.

- A statement that insolvency of the plan could result in benefits lower than benefits paid under the proposed suspension and a description of the projected benefit payments in the event of plan insolvency;
- A statement that insolvency of PBGC would result in benefits lower than benefits otherwise paid in the case of plan insolvency;
- A statement that the plan's actuary has certified that the plan is projected to avoid insolvency, taking into account the proposed suspension of benefits (and, if applicable, a proposed partition of the plan), and an accompanying statement that the actuary's projection is subject to uncertainty;
- A statement that the suspension will go into effect unless a majority of eligible voters vote to reject the suspension and that, therefore, a failure to vote has the same effect on the outcome of the vote as a vote in favor of the suspension;
- A copy of the individualized estimate that was provided as part of the earlier notice described in section 432(e)(9)(F) (or, if that individualized estimate is no longer accurate, a corrected version of that estimate); and
- A description of the voting procedures, including the deadline for voting.

These final regulations provide that the statement in opposition to the proposed suspension that is compiled from comments received on the application will be prepared by the Labor Department. The final regulations provide that this statement in opposition must be written in a manner that is readily understandable to the average plan participant. If there are no comments in opposition to the proposed suspension, then the statement in opposition will indicate that there were no such comments.

Model language for use in the ballot may be published in the form of a revenue procedure, notice, or other guidance published in the Internal Revenue Bulletin.

E. Timing Rules for the Participant Vote

In accordance with section 432(e)(9)(H)(ii), the final regulations require that the Treasury Department (in consultation with PBGC and the Labor Department) administer the participant vote no later than 30 days following the date of approval of an application for a suspension of benefits. The final regulations interpret the term "administer a vote" to mean that eligible voters must have the opportunity to vote beginning no later than 30 days following approval of the application, but the regulations do not require voting to be completed within that 30-day time frame. Accordingly, ballot packages must be distributed no later than 30 days after the application has been approved, and the voting period (the period during which a vote received from an eligible voter will be counted) begins on the ballot distribution date. Although ballot packages may be distributed at any time up to 30 days following approval of an application for suspension of benefits, it is generally expected that ballot packages will be distributed well before that deadline.

The final regulations specify that the voting period generally will remain open until the 30th day following the date the Treasury Department approves the application for a suspension of benefits. However, the voting period will not close earlier than 21 days after the ballot distribution date. In addition, the Treasury Department (in consultation with PBGC and the Labor Department) is permitted to specify a later end to the voting period in appropriate circumstances. For example, an extension might be appropriate if, near the end of the original voting period, there are significant technical difficulties with respect to the collection of votes and those technical difficulties are not resolved in time to provide eligible voters with sufficient time to cast their votes.

F. Methods for Casting Votes

The final regulations specify that an automated voting system must be made available to the eligible voters under which each eligible voter who furnishes a voter identification code must be able to cast a vote to be tabulated by the automated voting system. Such a system must be designed to record votes both electronically (through a Web site) and telephonically (through a toll-free number that allows votes to be cast using both a touch-tone voting system and an interactive voice response system). Because the system includes interactive voice response capability, eligible voters can cast votes on their home phones (including rotary phones) and all types of mobile phones (including phones that cannot access the internet). This type of system will permit any voter who lacks internet access or, for any reason, is unwilling or unable to vote via a Web site, to cast a vote using a toll-free number.

A number of commenters to the 2015 regulations requested that eligible voters be permitted to cast votes by mail. In response to these comments, the final regulations provide that, in appropriate circumstances, the Treasury Department may, in consultation with PBGC and the Labor Department, allow voters to cast votes by mail in lieu of using the automated voting system.[13] If voters are permitted to cast votes by mail then the ballot package must include a postage prepaid, return addressed envelope for use in returning the completed ballot.

G. General Procedures Following the Vote

Under section 432(e)(9)(H)(ii), a proposed suspension is generally permitted to be implemented unless rejected by a majority vote of all eligible voters. Numerous commenters expressed dissatisfaction with this statutory provision, and several commenters suggested that the regulations require a majority of eligible voters to vote in favor of a suspension before it is permitted to take effect. The Treasury Department and the IRS have not adopted this suggestion because it is inconsistent with the statutory language.

As under the 2015 regulations, the final regulations provide that, for purposes of determining whether a majority of all eligible voters have voted to reject the suspension under section 432(e)(9)(H)(ii), any eligible voters to whom ballots have not been provided (because the individuals could not be located) are treated as voting to reject the suspension at the same rate (in other words, in the same percentage) as those to whom ballots have been provided.

In accordance with section 432(e)(9)(H)(ii), the final regulations require that an approved suspension will be permitted to take effect unless a majority of all eligible voters vote to reject the suspension. If a majority of all eligible voters vote to reject the suspension, the suspension will not be permitted to take effect (except that, as described in section IX.H of this preamble, the suspension or a modified suspension will be permitted to go into effect if the plan is a systemically important plan). A plan sponsor is permitted to submit a new suspension application to the Treasury Department for approval in any case in which a suspension is prohibited from taking effect as a result of a vote.

H. Special Rules for Systemically Important Plans

The final regulations set forth rules for systemically important plans that are generally the same as the rules set forth in the 2015 regulations. The final regulations provide that if a majority of all eligible voters vote to reject the suspension, the Treasury Department will consult with PBGC and the Labor Department to determine if the plan is a systemically important plan. The Treasury Department is required to make this determination no later than 14 days after the results of the vote are certified.

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[13] If a mail-in ballot is permitted then it must be received before the end of the voting period in order to be considered.

The final regulations provide that the Participant and Plan Sponsor Advocate selected under section 4004 of ERISA may, in the case of a systemically important plan, submit recommendations to the Treasury Department with respect to an approved suspension (or any modifications to an approved suspension). Under the 2015 regulations, the Participant and Plan Sponsor Advocate was given up to 30 days after the Treasury Department's determination that the plan is systemically important to make this recommendation. The final regulations change this deadline to give the Participant and Plan Sponsor Advocate up to 44 days after the results of the participant vote are certified to submit any recommendations. This 44-day period provides the Participant and Plan Sponsor Advocate with 30 days following the Treasury Department's determination to make its recommendations if the Treasury Department uses the entire 14 days to determine that plan is a systemically important plan (and provides the Participant and Plan Sponsor Advocate a longer time if the Treasury Department makes its determination at an earlier date).

As under the 2015 regulations, the final regulations provide that if a plan is a systemically important plan for which a majority of all eligible voters vote to reject the suspension then, as required under section 432(e)(9)(H)(v), the Treasury Department will either permit the implementation of the suspension that was rejected by the vote or permit the implementation of a modification of that suspension. Under any such modification, the plan must be projected to avoid insolvency in accordance with section 432(e)(9)(D)(iv). No later than 60 days after the results of a vote to reject a suspension are certified, the Treasury Department will notify the plan sponsor that the suspension (or a modified suspension) is permitted to be implemented.

The final regulations adopt the definition of a systemically important plan from the 2015 regulations, with a minor clarification. Under the final regulations, a systemically important plan is a plan with respect to which PBGC projects that the present value of its financial assistance payments will exceed $1.0 billion if the suspension is not implemented. The final regulations clarify that this $1.0 billion threshold is indexed for inflation.

I. Final Treasury Department Authorization or Notification Following the Vote

As under the 2015 regulations, the final regulations provide that in any case in which a proposed suspension (or a modification of a proposed suspension) is permitted to go into effect, the Treasury Department, in consultation with PBGC and the Labor Department, will issue a final authorization to suspend with respect to the suspension. If a suspension is permitted to go into effect following a vote, the final authorization will be issued no later than seven days after the vote. If a suspension is permitted to go into effect following a determination that the plan is a systemically important plan, the final authorization will be issued at a time sufficient to allow the implementation of the suspension prior to the end of the 90-day period beginning on the date the results of the vote rejecting the suspension are certified. Under the final regulations, no later than 60 days after the certification, the Treasury Department will notify the plan sponsor that the suspension that was rejected by the vote or a modified suspension is permitted to be implemented.

Effective/Applicability Dates

These regulations are effective on April 28, 2016. The final regulations under § 1.432(e)(9)–1 apply with respect to suspensions for which the approval or denial is issued on or after April 26, 2016. In the case of a systemically important plan, the final regulations apply with respect to any modified suspension implemented on or after that date.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings notices, and other guidance cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS Web site at *http://www.irs.gov.*

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

The Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6) requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities. In this case, the IRS and Treasury believe that the regulations likely would not have a "significant economic impact on a substantial number of small entities." 5 U.S.C. 605. This certification is based on the fact that the number of small entities affected by this rule is unlikely to be substantial because it is unlikely that a substantial number of small multiemployer plans in critical and declining status will suspend benefits under section 432(e)(9).

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Contact Information

For general questions regarding these regulations, please contact the Department of the Treasury MPRA guidance information line at (202) 622–1559 (not a toll-free number). For information regarding a specific application for a suspension of benefits, please contact the Department of the Treasury at (202) 622–1534 (not a toll-free number).

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.432(e)(9)–1 is added to read as follows:

§ 1.432(e)(9)–1 Benefit suspensions for multiemployer plans in critical and declining status.

(a) *General rules on suspension of benefits*—(1) *General rule.* Subject to section 432(e)(9)(B) through (I) and this section, the plan sponsor of a multiemployer plan that is in critical and declining status (within the meaning of section 432(b)(6)) for a plan year may, by plan amendment adopted in the plan year, implement a suspension of benefits that the plan sponsor deems appropriate. Such an amendment is permitted notwithstanding the anti-cutback provisions of section 411(d)(6). As amended, the terms of the plan must satisfy the requirements of section 401(a).

(2) *Adoption of plan terms inconsistent with suspension requirements*—(i) *General rule.* A plan may implement (or continue to implement) a reduction of benefits pursuant to a suspension of benefits only if the terms of the plan are consistent with the requirements of section 432(e)(9) and this section.

(ii) *Changes in level of suspension*—(A) *Phased-in suspension.* A plan's terms are consistent with the requirements of section 432(e)(9) even if the plan provides that, instead of a suspension of benefits occurring in full on a specified effective date, the amount of a suspension will phase in or otherwise change in a definite, pre-determined manner as of a specified future effective date or dates.

(B) *Level of suspension contingent on future events.* Except as otherwise provided in this paragraph (a)(2)(ii), a plan's terms are inconsistent with the requirements of section 432(e)(9) if they provide that the amount of a suspension will change contingent upon the occurrence of any other specified future event, condition, or development. For example, a plan is not permitted to provide that an additional or larger suspension of benefits is triggered if the plan's funded status deteriorates. Similarly, a plan is not permitted to provide that a suspension of benefits is decreased if the plan's funded status improves (except upon a failure to satisfy the annual plan sponsor determinations requirement of paragraph (c)(4) of this section).

(C) *Level of suspension contingent on future status of individual.* A plan's terms are not inconsistent with the requirements of section 432(e)(9) merely because they provide that, for a participant who has not commenced benefits before the effective date of the suspension, the amount of the suspension will change upon the occurrence of a specified future event, condition or development (such as retirement, death, or disability) with respect to the participant.

(3) *Organization of the regulation.* This paragraph (a) contains definitions and general rules relating to a suspension of benefits by a multiemployer plan under section 432(e)(9). Paragraph (b) of this section defines a suspension of benefits and describes the length of a suspension, the treatment of beneficiaries and alternate payees under this section, and the requirement to select a retiree representative. Paragraph (c) of this section prescribes certain rules for the actuarial certification and plan sponsor determinations that must be made in order for a plan to suspend benefits. Paragraph (d) of this section describes certain limitations on suspensions of benefits. Paragraph (e) of this section prescribes rules relating to benefit improvements. Paragraph (f) of this section describes the requirement to provide notice in connection with an application to suspend benefits. Paragraph (g) of this section describes certain requirements with respect to the approval or denial of an application for a suspension of benefits. Paragraph (h) of this section contains certain rules relating to the vote on an approved suspension, systemically important plans, and the issuance of a final authorization to suspend benefits. Paragraph (j) of this section provides the effective/applicability date of this section.

(4) *Definitions.* The following definitions apply for purposes of this section—

(i) *Pay status.* A person is in pay status under a multiemployer plan if, as described in section 432(j)(6), at any time during the current plan year, the person is a participant, beneficiary, or alternate payee under the plan and is paid an early, late, normal, or disability retirement benefit under the plan (or a death benefit under the plan related to a retirement benefit).

(ii) *Plan sponsor.* The term plan sponsor means the association, committee, joint board of trustees, or other similar group of representatives of the parties that establishes or maintains the multiemployer plan. However, in the case of a plan described in section 404(c), or a continuation of such a plan, the term plan sponsor means the association of employers that is the employer settlor of the plan.

(iii) *Effective date of suspension of benefits*—(A) *Individuals who are receiving benefits.* In the case of a suspension affecting an individual who is receiving benefits when the suspension is implemented, the effective date of a suspension of benefits is the first date as of which any portion of the individual's benefits are not paid as a result of the suspension.

(B) *Individuals who are not receiving benefits.* In the case of a suspension affecting individuals other than individuals described in paragraph (a)(4)(iii)(A) of this section, the effective date of the suspension is the first date as of which the individual's entitlement to benefits is reduced as a result of the implementation of the suspension, regardless of whether the individual is eligible to commence benefits at that date.

(C) *Phased-in suspension.* If a suspension of benefits provides for more than one reduction in benefits over time, such that benefits are scheduled to be reduced by an additional amount after benefits are first reduced pursuant to the suspension, then each date as of which benefits are reduced is treated as a separate effective date of the suspension. However, if the effective date of the final scheduled reduction in benefits in a series of reductions pursuant to a suspension is less than three years later than the effective date of the first reduction, then the effective date of the first reduction will be treated as the effective date of all subsequent reductions pursuant to that suspension.

(D) *Effective date may not be retroactive.* The effective date of a suspension may not precede the date on which a final authorization to suspend benefits is issued pursuant to paragraph (h)(6) of this section.

(b) *Definition of suspension of benefits and related rules*—(1) *In general*—(i) *Definition.* For purposes of this section, the term suspension of benefits means the temporary or permanent reduction, pursuant to the terms of the plan, of any current or future payment obligation of the plan with respect to any plan participant. A suspension of benefits may apply with respect to a plan participant regardless of whether the participant, beneficiary, or alternate payee commenced receiving benefits before the effective date of the suspension of benefits.

(ii) *Plan not liable for suspended benefits.* If a plan pays a reduced level of benefits pursuant to a suspension of benefits that complies with the requirements of section 432(e)(9) and this section, then the plan is not liable for any benefits not paid as a result of the suspension.

(2) *Length of suspension*—(i) *In general.* A suspension of benefits may be of indefinite duration or may expire as of a date that is specified in the plan amendment implementing the suspension.

(ii) *Effect of a benefit improvement.* A plan sponsor may amend the plan to eliminate some or all of a suspension of benefits, provided that the amendment satisfies the requirements that apply to a benefit improvement under section 432(e)(9)(E), in accordance with the rules of paragraph (e) of this section.

(3) *Treatment of beneficiaries and alternate payees.* Except as otherwise specified in this section, all references to suspensions of benefits, increases in benefits, or resumptions of suspended benefits with respect to participants also apply with respect to benefits of beneficiaries or alternate payees (as defined in section 414(p)(8)) of participants.

(4) *Retiree representative*—(i) *In general*—(A) *Requirement to select retiree representative.* The plan sponsor of a plan that intends to submit an application for a suspension of benefits and that has reported a total of 10,000 or more participants as of the end of the plan year for the most recently filed Form 5500, Annual Return/Report of Employee Benefit Plan, must select a retiree representative. The plan sponsor must select the retiree representative at least 60 days before the date the plan sponsor submits an application to suspend benefits. The retiree representative must be a plan participant who is in pay status. The retiree representative may or may not be a plan trustee.

(B) *Role of retiree representative.* The role of the retiree representative is to advocate for the interests of the retired and deferred vested participants and beneficiaries of the plan, beginning when the retiree representative is selected and continuing throughout the suspension approval process. In the discretion of the plan sponsor, the retiree representative may continue in this role throughout the period of the benefit suspension.

(ii) *Reasonable expenses from plan.* The plan must pay reasonable expenses incurred by the retiree representative, including reasonable expenses for legal and actuarial support and communication with retired and deferred vested participants and beneficiaries, commensurate with the plan's size and funded status.

(iii) *Disclosure of information.* Upon request, the plan sponsor must promptly provide the retiree representative with relevant information, such as plan documents and data, that is reasonably necessary to enable the retiree representative to perform the role described in paragraph (b)(4)(i)(B) of this section.

(iv) *Special rules relating to fiduciary status.* See section 432(e)(9)(B)(v)(III) for rules relating to the fiduciary status of a retiree representative.

(v) *Retiree representative for other plans.* The plan sponsor of a plan that has reported fewer than 10,000 participants as of the end of the plan year for the most recently filed Form 5500, Annual Return/Report of Employee Benefit Plan is permitted to select a retiree representative. The rules in this paragraph (b)(4) (other than the rules in the first two sentences of paragraph (b)(4)(i)(A) of this section concerning the size of the plan and the timing of the appointment of the retiree representative) apply to such a representative.

(c) *Conditions for suspension*—(1) *In general*—(i) *Actuarial certification and initial plan sponsor determinations.* The plan sponsor of a plan in critical and declining status for a plan year may suspend benefits only if the actuarial certification requirement in paragraph (c)(2) of this section and the initial plan sponsor determinations requirement in paragraph (c)(3) of this section are met.

(ii) *Annual requirement to make plan sponsor determinations.* As provided in paragraph (c)(5) of this section, the suspension will continue only if the plan sponsor continues to make the annual plan sponsor determinations described in paragraph (c)(4) of this section.

(2) *Actuarial certification.* A plan satisfies the actuarial certification requirement of this paragraph (c)(2) if, taking into account the proposed suspension of benefits (and, if applicable, a proposed partition of the plan under section 4233 of the Employee Retirement Income Security Act of 1974, Public Law 93–406 (88 Stat. 829 (1974)), as amended (ERISA)), the plan's actuary certifies that the plan is projected to avoid insolvency within the meaning of section 418E, assuming the suspension of benefits continues until it expires by its own terms or if no such expiration date is set, indefinitely.

(3) *Initial plan sponsor determinations*—(i) *General rule.* A plan satisfies the initial plan sponsor determinations requirement of this paragraph (c)(3) only if the plan sponsor determines that—

(A) All reasonable measures to avoid insolvency, within the meaning of section 418E, have been taken; and

(B) The plan would not be projected to avoid insolvency (determined using the standards described in paragraphs (d)(5)(ii), (iv), and (v) of this section) if no suspension of benefits were applied under the plan.

(ii) *Factors.* In making its determination that all reasonable measures to avoid insolvency, within the meaning of section 418E, have been taken, the plan sponsor may take into account the following non-exclusive list of factors—

(A) Current and past contribution levels;

(B) Levels of benefit accruals (including any prior reductions in the rate of benefit accruals);

(C) Prior reductions (if any) of adjustable benefits;

(D) Prior suspensions (if any) of benefits under this section;

(E) The impact on plan solvency of the subsidies and ancillary benefits available to active participants;

(F) Compensation levels of active participants relative to employees in the participants' industry generally;

(G) Competitive and other economic factors facing contributing employers;

(H) The impact of benefit and contribution levels on retaining active participants and bargaining groups under the plan;

(I) The impact of past and anticipated contribution increases under the plan on employer attrition and retention levels; and

(J) Measures undertaken by the plan sponsor to retain or attract contributing employers.

(iii) *Reliance on certification of critical and declining status.* For purposes of the insolvency projection under paragraph (c)(3)(i)(B) of this section, a plan sponsor may rely on the actuarial certification made pursuant to section 432(b)(3)(A)(i) that the plan is in critical and declining status for the plan year in making the determination that the plan is projected to become insolvent unless benefits are suspended.

(4) *Annual plan sponsor determinations*—(i) *General rule.* A plan satisfies the annual plan sponsor determinations requirement of this paragraph (c)(4) for a plan year only if the plan sponsor determines, no later than the last day of the plan year, that—

(A) All reasonable measures to avoid insolvency have been and continue to be taken; and

(B) The plan would not be projected to avoid insolvency (determined using the standards described in paragraphs (d)(5)(ii), (iv), and (v) of this section, substituting the current plan year for the plan year that includes the effective date of the suspension) if no suspension of benefits were applied under the plan.

(ii) *Factors.* In making its determination that all reasonable measures to avoid insolvency have been and continue to be taken, the plan sponsor may take into account the non-exclusive list of factors in paragraph (c)(3)(ii) of this section.

(iii) *Requirement to maintain written record.* The plan sponsor must maintain a written record of the annual plan sponsor determinations made under this paragraph (c)(4). The written record must be included in an update to the rehabilitation plan, whether or not there is otherwise an update for that year (or, if the plan is no longer in critical status, must be included in the documents under which the plain is maintained). The written record of the determinations must describe the plan sponsor's consideration of factors, as described in paragraph (c)(4)(ii) of this section.

(5) *Failure to make annual plan sponsor determinations.* If a plan sponsor fails to satisfy the annual plan sponsor determinations requirement of paragraph (c)(4) of this section for a plan year (including maintaining the written record described in paragraph (c)(4)(iii) of this section), then the suspension of benefits will cease to be in effect beginning as of the first day of the next plan year.

(d) *Limitations on suspension*—(1) *In general.* Any suspension of benefits with respect to a participant made by a plan sponsor pursuant to this section is subject to the individual limitations of sections 432(e)(9)(D)(i) through (iii) and paragraphs (d)(2) through (d)(4) of this section. After applying those provisions, the overall size and distribution of the suspension is subject to the aggregate limitations of sections 432(e)(9)(D)(iv) and (vi) and paragraphs (d)(5) and (d)(6) of this section. See section 432(e)(9)(D)(vii) and paragraph (d)(8) of this section for additional rules applicable to certain plans.

(2) *Guarantee-based limitation*—(i) *General rule.* The reduction with respect to a participant under a suspension of benefits must be limited so that, on and after the effective date of the suspension, the monthly benefit is not less than the guarantee-based limitation. The guarantee-based limitation is 110 percent of the monthly benefit payable to a participant, beneficiary, or alternate payee that would be guaranteed by the Pension Benefit Guaranty Corporation (PBGC) under section 4022A of ERISA if the plan were to become insolvent as of the effective date of the suspension.

(ii) *PBGC guarantee.* Under section 4022A of ERISA, the monthly benefit of a participant or beneficiary that would be guaranteed by PBGC with respect to a plan if the plan were to become insolvent as of the effective date of the suspension is generally based on section 4022A(c)(1) of ERISA. Under that section, the monthly benefit that would be guaranteed if the plan were to become insolvent as of the date as of which the guarantee is determined is the product of—

(A) 100 percent of the accrual rate up to $11, plus 75 percent of the lesser of—

(*1*) $33; or

(*2*) The accrual rate, if any, in excess of $11; and

(B) The number of the participant's years and months of credited service as of that date.

(iii) *Calculation of accrual rate.* The accrual rate, as defined in section 4022A(c)(2) of ERISA, is calculated by dividing—

(A) The participant's or beneficiary's monthly benefit, described in section 4022A(c)(2)(A) of ERISA; by

(B) The participant's years of credited service, described in section 4022A(c)(3) of ERISA, as of the effective date of the suspension.

(iv) *Special rule for non-vested participants.* For purposes of this paragraph (d)(2), a participant's nonforfeitable benefits under section 4022A(a) of ERISA include benefits that are forfeitable as of the effective date of the suspension, provided that the participant would have a nonforfeitable right to those benefits if the participant continued to earn vesting service following that date.

(v) *Examples.* The following examples illustrate the limitation on a suspension of benefits under this paragraph (d)(2). Unless otherwise stated, the amount of guarantee payable by PBGC in these examples is based on section 4022A(c) of ERISA, and the rules under section 4022A(d) of ERISA (guarantee for benefits reduced under section 411(a)(3)(E)), section 4022A(e) of ERISA (benefits ineligible for guarantee), and section 4022A(h) of ERISA (guarantee for benefits accrued as of July 30, 1980) do not apply. In these examples, unless otherwise stated, the monthly benefits are nonforfeitable, are based on benefits that have been in effect for at least 60 months as of the effective date of the suspension, and are no greater than the monthly benefit that would be payable at normal retirement age in the form of a single life annuity.

Example 1. (i) *Facts.* A participant is receiving a benefit of $1,500 per month immediately prior to the effective date of the suspension. The participant has 30 years of credited service under the plan.

(ii) *Calculation of accrual rate.* The participant's accrual rate is $50, calculated by dividing the participant's monthly benefit payment ($1,500) by the participant's years of credited service (30).

(iii) *Calculation of monthly PBGC-guaranteed benefit.* The first $11 of the accrual rate is fully guaranteed, and the next $33 of the accrual rate is 75% guaranteed ($33 × .75 = $24.75). The participant's monthly guaranteed benefit per year of credited service is $35.75 ($11 + $24.75 = $35.75). The PBGC guarantee formula is then applied to produce the amount of guarantee payable by PBGC, which is $1,072.50 ($35.75 × 30 years = $1,072.50).

(iv) *Calculation of guarantee-based limitation.* A suspension of benefits may not reduce the participant's benefits, determined on and after the effective date of the suspension, below the guarantee-based limitation, which is equal to 110% of the amount of guarantee payable by PBGC. That monthly amount is $1,179.75 ($1,072.50 × 1.1 = $1,179.75).

Example 2. (i) *Facts.* The facts are the same as in *Example 1,* except that the participant is deceased and, immediately prior to the effective date of the suspension, the participant's beneficiary is receiving a monthly benefit of $750 under a 50% joint and survivor annuity.

(ii) *Calculation of accrual rate.* The beneficiary's accrual rate is $25, calculated by dividing the beneficiary's monthly benefit payment ($750) by the participant's years of credited service (30).

(iii) *Calculation of monthly PBGC-guaranteed benefit.* The first $11 of the accrual rate is fully guaranteed, and the next $14 ($25 − $11 = $14) of the accrual rate is 75% guaranteed ($14 × .75 = $10.50). The beneficiary's monthly guaranteed benefit is $21.50 per year of credited service ($11 + $10.50 = $21.50). The PBGC guarantee formula is then applied to produce the amount of guarantee payable by PBGC, which is $645 ($21.50 × 30 years = $645).

(iv) *Calculation of guarantee-based limitation.* A suspension of benefits may not reduce the beneficiary's benefits, determined on and after the effective date of the suspension, below the guarantee-based limitation, which is equal to 110% of the monthly amount of guarantee payable by PBGC. That monthly guarantee-based limitation amount is $709.50 ($645 × 1.1 = $709.50).

Example 3. (i) *Facts.* A participant would be eligible for a monthly benefit of $1,000 payable as a single life annuity at normal retirement age, based on the participant's 25 years of credited service. The plan also permits a participant to receive a benefit on an unreduced basis as a single life annuity at a particular early retirement age and permits participants to receive an early retirement benefit beginning at that age in the form of a social security level income option. The participant has elected the social security level income option under which the participant receives a monthly benefit of $1,600 prior to normal retirement age (which is the plan's assumed social security retirement age) and $900 after normal retirement age.

(ii) *Calculation of accrual rate.* For purposes of calculating the accrual rate, the monthly benefit that is used to calculate the PBGC guarantee does not exceed the monthly benefit of $1,000 that would be payable at normal retirement age. In calculating the accrual rate, the amount of guarantee payable by PBGC would be based on a monthly benefit of $1,000 prior to normal retirement age and $900 after normal retirement age. Before normal retirement age, the participant's accrual rate is $40, determined by dividing the participant's monthly benefit payment ($1,000) by years of credited service (25). After normal retirement age, the participant's accrual rate is $36, calculated by dividing the participant's monthly benefit payment ($900) by the participant's years of credited service (25).

(iii) *Calculation of monthly PBGC-guaranteed benefit.* Before normal retirement age, the first $11 of the accrual rate is fully guaranteed, and the next $29 of the accrual rate is 75% guaranteed ($29 × .75 = $21.75). The participant's monthly guaranteed benefit per year of credited service is $32.75 ($11 + $21.75 = $32.75). The PBGC guarantee formula is then applied to produce the amount of guarantee payable by PBGC, which is $818.75 ($32.75 × 25 years = $818.75). After normal retirement age, the first $11 of the accrual rate is fully guaranteed, and the next $25 of the accrual rate is 75% guaranteed ($25 × .75 = $18.75). The participant's monthly guaranteed benefit per year of credited service is $29.75 ($11 + $18.75 = $29.75). The PBGC guarantee formula is then applied to produce the amount of guarantee payable by PBGC, which is $743.75 after normal retirement age ($29.75 × 25 years = $743.75).

(iv) *Calculation of guarantee-based limitation.* A suspension of benefits may not reduce the participant's benefits, determined on and after the effective date of the suspension, below the guarantee-based limitation, which is equal to 110% of the monthly amount of guarantee payable by PBGC. That monthly guarantee-based limitation amount is $900.63 ($818.75 × 1.1 = $900.63) before normal retirement age and $818.13 ($743.75 × 1.1 = $818.13) after normal retirement age.

Example 4. (i) *Facts.* A participant would be eligible for a monthly benefit of $1,000 payable as a single life annuity at normal retirement age, based on the participant's 20 years of credited service. The plan provides an actuarial increase for delaying benefits until after normal retirement age. The participant delays commencement of benefits until after normal retirement age and the monthly benefit the participant is receiving immediately before the effective date of the suspension is $1,200 instead of $1,000.

(ii) *Calculation of accrual rate.* For purposes of calculating the accrual rate, the monthly benefit that is used to calculate the PBGC guarantee does not exceed the monthly benefit of $1,000 that would be payable at normal retirement age. Thus, in determining the accrual rate, the PBGC guarantee would be based on a monthly benefit of $1,000, whether benefits are paid at or after normal retirement age. The participant's accrual rate is $50, calculated by dividing the participant's monthly benefit payment ($1,000) by the participant's years of credited service (20).

(iii) *Calculation of monthly PBGC-guaranteed benefit.* The first $11 of the accrual rate is fully guaranteed, and the next $33 of the accrual rate is 75% guaranteed ($33 × .75 = $24.75). The participant's monthly guaranteed benefit per year of credited service is $35.75 ($11 + $24.75 = $35.75). The PBGC guarantee formula is then applied to produce the amount of guarantee payable by PBGC, which is $715 ($35.75 × 20 years = $715).

(iv) *Calculation of guarantee-based limitation.* A suspension of benefits may not reduce the participant's benefits, determined on and after the effective date of the suspension, below the guarantee-based limitation, which is equal to 110% of the monthly amount of guarantee payable by PBGC. That monthly guarantee-based limitation amount is $786.50 ($715 × 1.1 = $786.50).

Example 5. (i) *Facts.* A plan provides that a participant who has completed at least five years of service will have a nonforfeitable right to 100% of an accrued benefit (and will not have a nonforfeitable right to any portion of the accrued benefit prior to completing five years of service). The plan implements a suspension of benefits on January 1, 2017. As of that date, a participant has three years of vesting service, and none of the participant's benefits are nonforfeitable under the terms of the plan.

(ii) *Calculation of nonforfeitable benefits.* For purposes of applying the guarantee-based limitation, the participant is considered to have a nonforfeitable right to 100% of the accrued benefit under the plan as of January 1, 2017.

(3) *Age-based limitation*—(i) *No suspension for participants or beneficiaries who are age 80 and older.* Pursuant to the age-based limitation of this paragraph (d)(3), no suspension of benefits is permitted to apply to a participant or beneficiary who—

(A) Has commenced benefits as of the effective date of the suspension; and

(B) Has attained 80 years of age no later than the end of the month that includes the effective date of the suspension.

(ii) *Limited suspension for participants and beneficiaries between ages 75 and 80.* Pursuant to the age-based limitation of this paragraph (d)(3), no more than the applicable percentage of the maximum suspendable benefit may be suspended for a participant or beneficiary who—

(A) Has commenced benefits as of the effective date of the suspension; and

(B) Has attained 75 years of age no later than the end of the month that includes the effective date of the suspension.

(iii) *Maximum suspendable benefit*—(A) *In general.* For purposes of this paragraph (d)(3), the maximum suspendable benefit with respect to a participant, beneficiary, or alternate payee is the portion of the individual's benefits that would otherwise be suspended pursuant to this section (that is, the amount that would be suspended without regard to the limitation of this paragraph (d)(3)).

(B) *Coordination of limitations.* An individual's maximum suspendable benefit is calculated after the application of the guarantee-based limitation under paragraph (d)(2) of this section and the disability-based limitation under paragraph (d)(4) of this section.

(iv) *Applicable percentage.* For purposes of this paragraph (d)(3), the applicable percentage is the percentage obtained by dividing—

(A) The number of months during the period beginning with the month after the month in which the suspension of benefits is effective and ending with the month during which the participant or beneficiary attains the age of 80, by

(B) 60.

(v) *Applicability of age-based limitation to benefits paid to beneficiaries.* If the age-based limitation of this paragraph (d)(3) applies to a participant on the effective date of the suspension, then the age-based limitation also applies to the beneficiary of the participant, based on the age of the participant as of the end of the month that includes the effective date of the suspension.

(vi) *Rule for benefits that have not commenced at the time of the suspension.* If benefits have not commenced to either a participant or beneficiary as of the effective date of the suspension, then in applying this paragraph (d)(3)—

(A) If the participant is alive on the effective date of the suspension, the participant is treated as having commenced benefits on that date; and

(B) If the participant dies before the effective date of the suspension, the beneficiary is treated as having commenced benefits on that date.

(vii) *Rules for alternate payees.* The age-based limitation of this paragraph (d)(3) applies to a suspension of benefits in which an alternate payee has an interest, whether or not the alternate payee has commenced benefits as of the effective date of the suspension. For purposes of this paragraph (d)(3), the applicable percentage for an alternate payee is calculated by—

(A) Using the participant's age as of the end of the month that includes the effective date of the suspension, if the alternate payee's right to the suspended benefits derives from a qualified domestic relations order within the meaning of section 414(p)(1)(A) (QDRO) under which the alternate payee shares in each benefit payment but the participant retains the right to choose the time and form of payment with respect to the benefit to which the suspension applies (shared payment QDRO); or

(B) Substituting the alternate payee's age as of the end of the month that includes the effective date of the suspension for the participant's age, if the alternate payee's right to the suspended benefits derives from a QDRO under which the alternate payee has a separate right to receive a portion of the participant's retirement benefit to be paid at a time and in a form different from that chosen by the participant (separate interest QDRO).

(viii) *Examples.* The following examples illustrate the rules of this paragraph (d)(3):

Example 1. (i) *Facts.* The plan sponsor of a plan in critical and declining status is implementing a suspension of benefits, effective December 1, 2017, that generally would reduce all benefit payments under the plan by 30%. On that date, a retiree is receiving a monthly benefit of $1,500 (which is not a benefit based on disability) and has 28 years of credited service under the plan. If none of the limitations in section 432(e)(9)(D)(i), (ii), and (iii) were to apply, a 30% suspension would reduce the retiree's monthly benefit by $450, to $1,050. Under the guarantee-based limitation in section 432(e)(9)(D)(i), the retiree's monthly benefit could not be reduced by more than $398.90, to $1,101.10 (1.1 × (28 × ($11 + (.75 × $33)))). The retiree is 77 years old on the effective date of the suspension, turns 78 on December 10, 2017, and turns 80 on December 10, 2019.

(ii) *Maximum suspendable benefit.* Because the retiree is not receiving a benefit based on disability under section 432(e)(9)(D)(iii), the retiree's maximum suspendable benefit is $398.90 (which is equal to the lesser of the amount of reduction that would apply pursuant to the 30% suspension ($450) or the amount of reduction that would be permitted under the guarantee-based limitation ($398.90)).

(iii) *Applicable percentage.* Because the retiree is between ages 75 and 80 on the effective date of the suspension, the reduction is not permitted to exceed the applicable percentage of the retiree's maximum suspendable benefit. The number of months during the period beginning with January 2018 (the month after the month that includes the effective date of the suspension) and ending with December 2019 (the month in which the retiree turns 80) is 24. The applicable percentage is equal to 40% (24 months divided by 60).

(iv) *Age-based limitation.* The retiree's maximum suspendable benefit is $398.90 and the applicable percentage is 40%. Thus, under the age-based limitation, the retiree's benefit may not be reduced by more than $159.56 ($398.90 × .40 = $159.56). Because the retiree was receiving a monthly benefit of $1,500, the suspension of benefits may not reduce the retiree's monthly benefit below $1,340.44 ($1,500 − $159.56 = $1,340.44).

Example 2. (i) *Facts.* The facts are the same as *Example 1,* except that the retiree is 79 years old on December 1, 2017, and turns 80 on December 20, 2017.

(ii) *Age-based limitation.* The suspension is not permitted to apply to the retiree because the retiree will turn 80 by the end of the month (December 2017) in which the suspension is effective.

Example 3. (i) *Facts.* The facts are the same as *Example 1,* but on the effective date of the suspension, the retiree is receiving a benefit in the form of a 50% joint and survivor annuity for himself and a contingent beneficiary who is age 71. The retiree dies in October 2018.

(ii) *Application of age-based limitation to contingent beneficiary.* Because the retiree had attained age 78 in the month that included the effective date of the suspension, the age-based limitation on the suspension of benefits for a 78-year-old individual applies to the retiree. The age-based limitation also applies to the contingent beneficiary, even though the contingent beneficiary had not commenced benefits under the plan as of the effective date of the suspension and had not attained age 75 by the end of the month containing the effective date of the suspension.

(iii) *Maximum suspendable benefit.* The contingent beneficiary's amount of guarantee payable by PBGC is based on the benefit the beneficiary would have received from the plan before the suspension ($750). The beneficiary's accrual rate is $26.7857 (calculated by dividing the monthly benefit payment ($750) by years of credited service (28)) and the beneficiary's amount of guarantee payable by PBGC is $639.50 (28 × ($11 + (.75 × $15.7857))). The beneficiary's maximum suspendable benefit is $46.55 (which is equal to the lesser of the amount of reduction that would apply pursuant to the 30% suspension ($225) or the amount of reduction that would be permitted under the guarantee-based limitation ($46.55, which is equal to ($750 − 1.1 × $639.50)).

(iv) *Applicable percentage.* The applicable percentage for the beneficiary is based on the retiree's age of 78 as of the end of the month that includes the effective date of the suspension. Accordingly, the applicable percentage for the beneficiary is 40%.

(v) *Age-based limitation.* The beneficiary's maximum suspendable benefit is $46.55 and the applicable percentage is 40%. Thus, under the age-based limitation, the beneficiary's benefit may not be reduced by more than $18.62 ($46.55 × .40 = $18.62). Therefore, as a result of the retiree's age-based limitation, the suspension of benefits may not reduce the beneficiary's monthly benefit below $731.38 ($750 − $18.62 = $731.38).

Example 4. (i) *Facts.* The facts are the same as *Example 3,* except that on the effective date of the suspension the retiree is age 71 and the retiree's contingent beneficiary is age 77.

(ii) *Application of age-based limitation to contingent beneficiary.* Because the retiree had not reached age 75 as of the end of the month that includes the effective date of the suspension, the age-based limitation on the suspension of benefits does not apply to the retiree. The age-based limitation also does not apply to the retiree's contingent beneficiary, even though the contingent beneficiary had attained age 77 as of the end of the month that includes the effective date of the suspension, because the contingent beneficiary had not yet commenced benefits on that date. The beneficiary's post-suspension benefit may not be less than the minimum benefit payable pursuant to the guarantee-based limitation, which is $703.45 ($639.50 × 1.1 = $703.45).

Example 5. (i) *Facts.* The facts are the same as in *Example 4,* except that the retiree died in October 2017, prior to the December 1, 2017 effective date of the suspension of benefits. The retiree's beneficiary commenced benefits on November 1, 2017.

(ii) *Application of age-based limitation to contingent beneficiary.* Because the retiree's beneficiary had commenced benefits before the effective date of the suspension and had reached age 75 as of the end of the month that includes the effective date of the suspension, the age-based limitation applies to the beneficiary based on the beneficiary's age as of the end of the month that includes the effective date of the suspension.

(4) *Disability-based limitation*—(i) *General rule.* Pursuant to the disability-based limitation of this paragraph (d)(4), benefits based on disability (as defined under the plan) may not be suspended.

(ii) *Benefits based on disability*—(A) *In general.* For purposes of this section, benefits based on disability means the entire amount paid to a participant pursuant to the participant becoming disabled, without regard to whether a portion of that amount would have been paid if the participant had not become disabled.

(B) *Rule for auxiliary or other temporary disability benefits.* If a participant begins receiving an auxiliary or other temporary disability benefit and the sole reason the participant ceases receiving that benefit is commencement of retirement benefits, then the benefit based on disability after commencement of retirement benefits is the lesser of—

(*1*) The periodic payment the participant was receiving immediately before the participant's retirement benefits commenced; or

(*2*) The periodic payment to the participant of retirement benefits under the plan.

(C) *Examples.* The following examples illustrate the disability-based limitation on a suspension of benefits under this paragraph (d)(4):

Example 1. (i) *Facts.* A participant with a vested accrued benefit of $1,000 per month, payable at age 65, becomes disabled at age 55. The plan applies a reduction to the monthly benefit for early commencement if the participant commences benefits before age 65. For a participant who commences receiving benefits at age 55, the actuarially adjusted early retirement benefit is 60% of the accrued benefit. However, the plan also provides that if a participant becomes entitled to an early retirement benefit on account of disability, as defined in the plan, the benefit is not reduced. On account of a disability, the participant commences an unreduced early retirement benefit of $1,000 per month at age 55 (instead of the $600 monthly benefit the participant would receive if the participant were not disabled). The participant continues to receive $1,000 per month after reaching age 65.

(ii) *Conclusion.* The participant's disability benefit payment of $1,000 per month commencing at age 55 is a benefit based on disability, even though the participant would have received a portion of these benefits at retirement regardless of the disability. Thus, both before and after attaining age 65, the participant's entire monthly payment amount ($1,000) is a benefit based on disability. A suspension of benefits is not permitted to apply to any portion of the participant's benefit at any time.

Example 2. (i) *Facts.* The facts are the same as *Example 1,* except that the terms of the plan provide that when a disabled participant reaches age 65, the disability pension is discontinued by reason of reaching age 65, and the retirement benefits commence. In this case, the amount of the participant's retirement benefits is the same as the amount that the participant was receiving immediately before commencing retirement benefits, or $1,000.

(ii) *Conclusion.* Before age 65, the participant's disability benefit payment of $1,000 per month commencing at age 55 is a benefit based on disability. After age 65, the periodic retirement benefit of $1,000 per month is a benefit based on disability because it does not exceed the benefit based on disability that the participant was receiving immediately before commencing retirement benefits. Thus, both before and after attaining age 65, the participant's entire monthly payment amount ($1,000) is a benefit based on disability. A suspension of benefits is not permitted to apply to any portion of the participant's benefit at any time.

Example 3. (i) *Facts.* The facts are the same as *Example 2,* except that upon reaching age 65, the participant elects to commence payment of retirement benefits not in the form of a single life annuity payable in the amount of $1,000 per month but instead in the form of an actuarially equivalent joint and survivor annuity payable in the amount of $850 per month.

(ii) *Conclusion.* Before age 65, the participant's benefit based on disability is $1,000 per month. After age 65, the participant's entire retirement benefit of $850 per month is a benefit based on disability because it does not exceed the benefit based on disability that the participant was receiving immediately before commencing retirement benefits. Thus, a suspension of benefits is not permitted to apply to any portion of those benefits at any time.

Example 4. (i) *Facts.* A participant's disability pension is a specified amount unrelated to the participant's accrued benefit. The participant's disability benefit commencing at age 55 is $750 per month. Upon reaching age 65, the participant's disability pension is discontinued by reason of reaching age 65 and the participant elects to receive an accrued benefit payable in the amount of $1,000 per month.

(ii) *Conclusion.* Before age 65, the participant's benefit based on disability is $750 per month. After age 65, the participant's benefit based on disability continues to be $750 per month (even though the participant's payment is $1,000 per month), because the benefit based on disability is the lesser of the periodic disability pension the participant was receiving immediately before retirement benefits commenced ($750) and the periodic payment of retirement benefits to the participant under the plan determined without regard to the suspension ($1,000). Thus, a suspension of benefits is not permitted to reduce the participant's benefit based on disability ($750 per month) at any time.

Example 5. (i) *Facts.* The facts are the same as *Example 2,* except that when the participant attains age 65, the participant's monthly benefit payment increases from $1,000 to $1,300 as a result of the plan providing additional accruals during the period of disability, as if the participant were not disabled.

(ii) *Conclusion.* As in *Example 2,* before age 65, the participant's benefit payment of $1,000 per month commencing at age 55 is a benefit based on disability. After age 65, the participant's benefit payment of $1,300 per month is a benefit based on disability because the $1,300 is payable based on additional accruals earned pursuant to the participant becoming disabled. Thus, both before and after attaining age 65, the participant's entire monthly payment amount is a benefit based on disability. A suspension of benefits is not permitted to apply to any portion of the participant's benefit at any time.

Example 6. (i) *Facts.* The facts are the same as *Example 3* of paragraph (d)(2)(v) of this section, except that the social security level income option is only available to a participant who incurs a disability as defined in the plan.

(ii) *Conclusion.* Before normal retirement age, the participant's benefit payment of $1,600 per month is a benefit based on disability. After normal retirement age, the participant's benefit based on disability is $900, which is the lesser of the $1,600 periodic payment that the participant was receiving immediately before the participant's normal retirement benefit commenced and the participant's $900 periodic payment of retirement benefits determined without regard to the suspension. Thus, a suspension of benefits is not permitted to apply to any portion of those benefits ($1,600 per month before and $900 per month after normal retirement age) at any time.

Example 7. (i) *Facts.* A plan applies a reduction to the monthly benefit for early commencement if a participant commences benefits before age 65. The plan also provides that if a participant becomes disabled, as defined in the plan, the benefit that is paid before normal retirement age is not reduced for early retirement. Under the plan, when a disabled participant reaches age 65, the disability pension is discontinued by reason of reaching age 65 and the retirement benefits commence. A participant with a vested accrued benefit of $1,000 per month, payable at age 65, becomes disabled at age 55. On account of the disability, the participant commences benefits at age 55 in the amount of $1,000 per month (instead of the $600 monthly benefit the participant could have received at that age if the participant were not disabled). The participant recovers from the disability at age 60, and the participant's disability benefits cease. At age 60, the participant immediately elects to begin an early retirement benefit of $800.

(ii) *Conclusion.* The participant's disability benefit payment of $1,000 per month commencing at age 55 is a benefit based on disability, even though the participant would have received a portion of these benefits at retirement regardless of the disability. Because the participant ceased receiving disability benefits on account of the participant no longer being disabled (and not solely on account of commencing retirement benefits), the participant's early retirement benefit of $800 per month that began after the disability benefit ended is not a benefit based on disability.

(5) *Limitation on aggregate size of suspension*—(i) *General rule.* Any suspension of benefits (considered, if applicable, in combination with a partition of the plan under section 4233 of ERISA (partition)) must be at a level that is reasonably estimated to—

(A) Enable the plan to avoid insolvency; and

(B) Not materially exceed the level that is necessary to enable the plan to avoid insolvency.

(ii) *Suspension sufficient to avoid insolvency*—(A) *General rule.* A suspension of benefits (considered, if applicable, in combination with a partition of the plan) will satisfy the requirement that it is at a level that is reasonably estimated to enable the plan to avoid insolvency if—

(*1*) For each plan year throughout an extended period (as described in paragraph (d)(5)(ii)(C) of this section) beginning on the first day of the plan year that includes the effective date of the suspension, the plan's solvency ratio is projected on a deterministic basis to be at least 1.0;

(*2*) Based on stochastic projections reflecting variance in investment return, the probability that the plan will avoid insolvency throughout the extended period is more than 50 percent; and

(*3*) Unless the plan's projected funded percentage (within the meaning of section 432(j)(2)) at the end of the extended period using the deterministic projection described in paragraph (d)(5)(ii)(A)(*1*) of this section exceeds 100 percent, that projection shows that, during each of the last five plan years of that period, neither the plan's solvency ratio nor its available resources (as defined in section 418E(b)(3)) is projected to decrease.

(B) *Solvency ratio.* For purposes of this section, a plan's solvency ratio for a plan year means the ratio of—

(*1*) The plan's available resources (as defined in section 418E(b)(3)) for the plan year; to

(*2*) The scheduled benefit payments under the plan for the plan year.

(C) *Extended period.* For purposes of this section, an extended period means a period of at least 30 plan years.

However, in the case of a temporary suspension of benefits that is scheduled to cease as of a date that is more than 25 years after the effective date, the extended period must be lengthened so that it ends no earlier than five plan years after the cessation of the suspension.

(iii) *Suspension not materially in excess of level necessary to avoid insolvency*—(A) *General rule.* A suspension of benefits will satisfy the requirement under paragraph (d)(5)(i)(B) of this section that the suspension be at a level that is reasonably estimated to not materially exceed the level necessary for the plan to avoid insolvency only if an alternative, similar but smaller suspension of benefits would not be sufficient to enable the plan to satisfy the requirement to avoid insolvency under paragraph (d)(5)(i)(A) of this section (determined using an extended period that is no shorter than the extended period used to satisfy the requirements of paragraph (d)(5)(i)(A) of this section). The alternative suspension of benefits that is used for this purpose is a suspension of benefits under which, for each participant or beneficiary, the amount of the reduction in the periodic payment (determined after application of the individual limitations) is equal to the amount of the reduction proposed for that participant or beneficiary in the application submitted pursuant to paragraph (g) of this section, decreased (but not below zero) by the greater of—

(*1*) Five percent of the amount of the reduction in the periodic payment proposed for that participant or beneficiary; or

(*2*) Two percent of the amount of the participant's or beneficiary's periodic payment determined without regard to the reduction proposed in the application.

(B) *Special rule for partitions.* If PBGC issues an order partitioning the plan, then a suspension of benefits with respect to the plan will be deemed to satisfy the requirement under paragraph (d)(5)(i)(B) of this section that the suspension be at a level that is reasonably estimated to not materially exceed the level necessary for the plan to avoid insolvency.

(iv) *Actuarial basis for projections*—(A) *In general.* This paragraph (d)(5)(iv) sets forth rules for the actuarial projections that are required under this paragraph (d)(5). The projections must reflect the assumption that the suspension of benefits continues indefinitely (or, if the suspension expires on a specified date by its own terms, until that date).

(B) *Reasonable actuarial assumptions and methods.* Each of the actuarial assumptions and methods used for the actuarial projections that are required under this paragraph (d)(5), and the combination of those actuarial assumptions and methods, must be reasonable, taking into account the experience of the plan and reasonable expectations. To be reasonable, the actuarial assumptions and methods must also be appropriate for the purpose of the measurement (this means that factors specific to the measurements must be taken into account). The actuary's selection of assumptions about future covered employment and contribution levels (including contribution base units and average contribution rate) may be based on information provided by the plan sponsor, which must act in good faith in providing the information. In addition, to the extent that an actuarial assumption used for the deterministic projection in paragraph (d)(5)(ii)(A)(*1*) of this section differs from that used to certify whether the plan is in critical and declining status pursuant to section 432(b)(3)(B)(iv), an explanation of the information and analysis that led to the selection of that different assumption must be provided. Similarly, to the extent that an actuarial assumption used for the stochastic projection in paragraph (d)(5)(ii)(A)(*2*) of this section differs from that used for the deterministic projection, an explanation of the information and analysis that led to the selection of that different assumption must be provided.

(C) *Initial value of plan assets and cash flow projections.* Except as provided in paragraph (d)(5)(iv)(D) of this section, the cash flow projections must be based on—

(*1*) The fair market value of plan assets as of the end of the calendar quarter immediately preceding the date the application is submitted;

(*2*) Projected benefit payments that are consistent with the projected benefit payments under the most recent actuarial valuation; and

(*3*) Appropriate adjustments to projected benefit payments to include benefits for new hires who are reflected in the projected contribution amounts.

(D) *Requirement to reflect significant events.* The projected cash flows relating to contributions, withdrawal liability payments, and benefit payments must also be adjusted to reflect significant events that occurred after the most recent actuarial valuation. Significant events include—

(*1*) A plan merger or transfer;

(*2*) The withdrawal or the addition of employers that changed projected cash flows relating to contributions, withdrawal liability payments, or benefit payments by more than five percent;

(*3*) A plan amendment, a change in a collective bargaining agreement, or a change in a rehabilitation plan that changed projected cash flows relating to contributions, withdrawal liability payments, or benefit payments by more than five percent; or

(*4*) Any other event or trend that resulted in a material change in those projected cash flows.

(v) *Simplified determination for smaller plans.* In the case of a plan that is not large enough to be required to select a retiree representative under paragraph (b)(4) of this section, the determination of whether the benefit suspension (or a benefit suspension in combination with a partition of the plan) will satisfy the requirement that it is at a level that is reasonably estimated to enable the plan to avoid insolvency is permitted to be made without regard to paragraph (d)(5)(ii)(A)(*2*) of this section.

(vi) *Additional disclosure*—(A) *Disclosure of past experience for critical assumptions.* The application for suspension must include a disclosure of the total contributions, total contribution base units and average contribution rate, withdrawal liability payments, and the rate of return on plan assets for each of the 10 plan years preceding the plan year in which the application is submitted.

(B) *Sensitivity of results to investment return assumptions.* The application must include deterministic projections of the plan's solvency ratio over the extended period using two alternative assumptions for the plan's rate of return. These alternatives are that the plan's future rate of return will be lower than the assumed rate of return used under paragraph (d)(5)(iv)(B) of this section by—

(*1*) One percentage point; and

(*2*) Two percentage points.

(C) *Sensitivity of results to industry level assumptions.* The application must include deterministic projections of the plan's solvency ratio over the extended period using two alternative assumptions for future contribution base units. These alternatives are that future contribution base units—

(*1*) Continue under the same trend as the plan experienced over the past 10 years; and

(*2*) Continue under the trend identified in paragraph (d)(5)(vi)(C)(*1*) of this section reduced by one percentage point.

(D) *Projection of funded percentage.* The application must include an illustration, prepared on a deterministic basis, of the projected value of plan assets, the accrued liability of the plan (calculated using the unit credit funding method), and the funded percentage for each year in the extended period.

(E) *Permitted simplification of certain projections.* It is permissible for the projections described in paragraph (d)(5)(vi)(C) of this section to be made without reflecting any adjustments to the projected benefit payments that result from the alternative assumptions regarding future contribution base units.

(6) *Equitable distribution*—(i) *In general.* Any suspension of benefits must be equitably distributed across the participant and beneficiary population, taking into account factors, with respect to participants and beneficiaries and their benefits, that may include one or more of the factors described in paragraph (d)(6)(ii) of this section. If a suspension of benefits provides for different treatment for different participants and beneficiaries (other than as a result of application of the individual limitations), then the suspension of benefits is equitably distributed across the participant and beneficiary population only if—

(A) Under the suspension, the participants and beneficiaries are divided into separate categories or groups that are defined by the consistent treatment of individuals within each separate category or group;

(B) Any difference in treatment under the suspension of benefits among the different categories or groups is based on relevant factors reasonably selected by the plan sponsor, such as the factors described in paragraph (d)(6)(ii) of this section; and

(C) Any such difference in treatment is based on a reasonable application of those relevant factors.

(ii) *Factors that may be considered*—(A) *In general.* In accordance with paragraph (d)(6)(i)(B) and (C) of this section, if, under the suspension, there is any difference between the treatment of one category or group of participants and beneficiaries and another category or group of participants and beneficiaries, that difference must be based on a reasonable application of relevant statutory factors described in paragraph (d)(6)(ii)(B) of this section and any other factors reasonably selected by the plan sponsor. For example, it would be reasonable for a plan sponsor to conclude that the statutory factor described in paragraph (d)(6)(ii)(B)(*3*) of this section (amount of benefit) is a factor that should be taken into account as justifying a lesser benefit reduction for participants or beneficiaries whose benefits are closer to the level of the PBGC guarantee than for others. In addition, it would be reasonable for a plan sponsor to conclude that the presumed financial vulnerability of certain participants or beneficiaries who are reasonably deemed to be in greater need of protection than other participants or beneficiaries is a factor that should be taken into account as justifying a lesser benefit reduction (as a percentage or otherwise) for those participants or beneficiaries than for others.

(B) *Statutory factors.* Factors that may be selected as a basis for differences in treatment under a suspension of benefits include, when reasonable under the circumstances, the following statutory factors:

(*1*) The age and life expectancy of the participant or beneficiary;

(*2*) The length of time that benefits have been in pay status;

(*3*) The amount of benefits;

(*4*) The type of benefit, such as survivor benefit, normal retirement benefit, or early retirement benefit;

(*5*) The extent to which a participant or beneficiary is receiving a subsidized benefit;

(*6*) The extent to which a participant or beneficiary has received post-retirement benefit increases;

(*7*) The history of benefit increases and reductions for participants and beneficiaries;

(*8*) The number of years to retirement for active employees;

(*9*) Any differences between active and retiree benefits;

(*10*) The extent to which active participants are reasonably likely to withdraw support for the plan, accelerating employer withdrawals from the plan and increasing the risk of additional benefit reductions for participants in and out of pay status; and

(*11*) The extent to which a participant's or beneficiary's benefits are attributable to service with an employer that failed to pay its full withdrawal liability.

(iii) *Reasonable application of factors.* An application of a factor referred to in paragraph (d)(6)(ii) of this section is unreasonable if it is inconsistent with the protections provided by the individual limitations described in paragraphs (d)(2) through (d)(4) of this section. For example, it would constitute an unreasonable application of the factor described in paragraph (d)(6)(ii)(B)(*3*) of this section (amount of benefit) if that factor were used to justify a larger suspension for participants whose benefits are closer to the guarantee-based limitation. Similarly, it would constitute an unreasonable application of the factors described in paragraph (d)(6)(ii)(B)(*1*) of this section (age and life expectancy of the participant or beneficiary) if those factors were used to justify a greater suspension for older participants.

(iv) *Special rule for identification of categories or groups*—(A) *New post-suspension benefit formula.* This paragraph (d)(6)(iv) applies in the case of a proposed suspension of benefits under which an individual's benefits after suspension are calculated under a new benefit formula (rather than by reference to the individual's benefits before suspension). In this case, the evaluation of whether the proposed suspension is equitably distributed across the participant and beneficiary population is based on a comparison of an individual's pre-suspension benefit to the individual's post-suspension benefit (determined without regard to the application of the individual limitations). Accordingly, all individuals whose pre-suspension benefits are determined under a uniform pre-suspension benefit formula and whose post-suspension benefits are determined under a different uniform post-suspension benefit formula are treated as a single group.

(B) *Blended pre-suspension benefit formula.* If a plan applies different pre-suspension benefit formulas with respect to different plan years, then all individuals to whom more than one such formula applied may be treated as having a uniform pre-suspension benefit formula for purposes of paragraph (d)(6)(iv)(A) of this section (even though those individuals have different proportions of their pre-suspension benefits calculated under the different benefit formulas).

(C) *Changes in early retirement factors.* For purposes of paragraph (d)(6)(iv)(A) of this section, two individuals are not treated as having different pre-suspension or post-suspension benefit formulas merely because, as a result of the application of a uniform set of early retirement factors, their benefits differ because of retirement at different ages.

(v) *Examples.* The following examples illustrate the rules on equitable distribution of a suspension of benefits of this paragraph (d)(6). As a simplifying assumption for purposes of these examples, it is assumed that the facts of each example describe all of the factors that are included in the application discussed in the example (provided, however, that, in the case of a plan described in section 432(e)(9)(D)(vii), the examples are not intended to illustrate the application of section 432(e)(9)(D)(vii) or its effect on the analysis or conclusions in the examples).

Example 1. (i) *Facts.* The plan sponsor applies for approval of a suspension of benefits on March 15, 2017. Under the plan terms applicable prior to the suspension, one group of participants benefitted only under Benefit Formula A and the remaining participants benefitted only under Benefit Formula B. Each of these benefit formulas is uniform. Under the suspension of benefits, subject to the individual limitations on benefit suspensions, benefits for all participants are reduced so that a uniform post-suspension benefit formula (Benefit Formula C) applies to all participants.

(ii) *Conclusion.* Because the reduction in benefits under the suspension formula is different for participants who benefitted only under Benefit Formula A than for participants who benefitted only under Benefit Formula B, the suspension of benefits provides for different treatment for different participants and beneficiaries (other than as a result of application of the individual limitations). In addition, the suspension of benefits provides for consistent treatment of participants within the following two categories: (1) Participants who benefitted only under Benefit Formula A; and (2) participants who benefitted only under Benefit Formula B. Therefore, pursuant to paragraph (d)(6)(iv)(A) of this section, these two categories of participants are each treated as a single group for purposes of evaluating whether the proposed suspension is equitably distributed across the participant and beneficiary population. In order to demonstrate that the distribution of the suspension satisfies the equitable distribution requirement, the plan sponsor must reasonably select and apply factors that are the basis for the different treatment of these two groups of participants.

Example 2. (i) *Facts.* The facts are the same as in *Example 1,* except that the plan terms applicable prior to the suspension did not provide for different benefit formulas for different groups of participants at any given time. Instead, the plan terms provided that different uniform benefit formulas applied for service prior to January 1, 2000, and for service on or after January 1, 2000.

(ii) *Conclusion.* The reduction in benefits under the suspension formula is different for participants who had service only prior to January 1, 2000, participants who had service only after January 1, 2000, and participants who had service during both of those periods. The suspension of benefits provides for different treatment for different participants and beneficiaries (other than as a result of application of the individual limitations). In addition, the suspension of benefits provides for consistent treatment of participants within the following three categories of participants: (1) Participants whose entire service was prior to January 1, 2000, (2) participants whose entire service was on or after January 1, 2000, and (3) participants who have some service before January 1, 2000 and some service on or after January 1, 2000. Therefore, pursuant to paragraph (d)(6)(iv)(A) of this section, the two categories of participants whose entire service was either before or on or after January 1, 2000 are each treated as a single group for purposes of evaluating whether the proposed suspension is equitably distributed across the participant and beneficiary population. In addition, pursuant to paragraph (d)(6)(iv)(B) of this section, the category of participants with some service before January 1, 2000 and some service on or after January 1, 2000 is treated as a single group for purposes of this evaluation. In order to demonstrate that the distribution of the suspension satisfies the equitable distribution requirement, the plan sponsor must reasonably select and apply factors that are the basis for the different treatment of these three categories of participants.

Example 3. (i) *Facts.* The plan sponsor applies for approval of a suspension of benefits. Under the suspension of benefits, subject to the individual limitations on benefit suspensions, benefits for all participants and beneficiaries are reduced by the same percentage, and the suspension application indicates the rationale for this reduction.

(ii) *Conclusion.* The suspension of benefits is equitably distributed across the participant and beneficiary populations.

Example 4. (i) *Facts.* The plan sponsor applies for approval of a suspension of benefits. Under the suspension of benefits, subject to the age-based and disability-based limitations of section 432(e)(9)(D)(ii) and (iii), the portion of each participant's and beneficiary's benefit that exceeds the guarantee-based limitation of section 432(e)(9)(D)(i) is reduced by the same percentage, and the suspension application indicates the rationale for this reduction.

(ii) *Conclusion.* The suspension of benefits is equitably distributed across the participant and beneficiary populations. The result would be the same if, instead, the suspension of benefits applies only to benefits that exceed a multiple (in excess of 100%) of the guarantee-based limitation.

Example 5. (i) *Facts.* A plan was previously amended to provide an ad hoc 15% increase to the benefits of all participants and beneficiaries (including participants who, at the time, were no longer earning service under the plan, which therefore included retirees and deferred vested participants). The plan sponsor applies for approval of a suspension of benefits. Under the suspension of benefits, subject to the individual limitations on benefit suspensions, benefits for all participants and beneficiaries who were no longer earning service under the plan at the time of the ad hoc amendment are reduced by eliminating the amendment for those individuals. The suspension application indicates why the benefit reduction is based on the statutory factors in paragraph (d)(6)(ii)(B)(*6*) of this section (the extent to which a participant or beneficiary has received post-retirement benefit increases), including application of the reduction to those who, at the time of the previous benefit increase, were either retired participants or deferred vested participants, and in paragraph (d)(6)(ii)(B)(*7*) of this section (the history of benefit increases and reductions), and why it is reasonable to apply the factors in this manner.

(ii) *Conclusion.* The suspension of benefits is equitably distributed across the participant and beneficiary populations. This is because the difference in treatment between the two groups of participants is based on whether a participant has received post-retirement benefit increases (in this case, whether a participant was earning service under the plan at the time of the benefit increase amendment), which under these facts is a relevant factor that may be reasonably selected by the plan sponsor, and the difference in treatment between the two groups of participants (eliminating the amendment only for benefits with respect to participants who were no longer earning service at the time of the amendment) is based on a reasonable application of that factor.

Example 6. (i) *Facts.* A plan contains a provision that provides a "thirteenth check" in plan years for which the investment return is greater than 7% (which was the assumed rate of return under the plan's actuarial valuation). The plan sponsor applies for approval of a suspension of benefits. Under the suspension of benefits, subject to the individual limitations on benefit suspensions, benefits for all participants and beneficiaries are reduced by eliminating the "thirteenth check" for all of those individuals. The suspension application indicates why the benefit reduction is based on the statutory factors in paragraph (d)(6)(ii)(B)(*6*) of this section (the extent to which a participant or beneficiary has received post-retirement benefit increases) and in paragraph (d)(6)(ii)(B)(*7*) of this section (the history of benefit increases and reductions), and why it is reasonable to apply the factors in this manner.

(ii) *Conclusion.* The suspension of benefits is equitably distributed across the participant and beneficiary populations.

Example 7. (i) *Facts.* A plan was previously amended to reduce future accruals from $60 per year of service to $50 per year of service. The plan sponsor applies for approval of a suspension of benefits. Under the suspension of benefits, subject to the individual limitations on benefit suspensions, the accrued benefits for all participants and beneficiaries are reduced to $50 per year of service (and the plan's generally applicable adjustments for early retirement and form of benefit apply). The suspension application indicates why the benefit reduction is based on the statutory factor in paragraph (d)(6)(ii)(B)(*7*) of this section (the history of benefit increases and reductions), and why it is reasonable to apply the factors in this manner.

(ii) *Conclusion.* The suspension of benefits is equitably distributed across the participant and beneficiary populations. This is because the difference in treatment among the different groups of participants is based on the history of benefit reductions and a discrepancy between active and retiree benefits, which under these facts are relevant factors that may be reasonably selected by the plan sponsor, and the difference in treatment between the three groups of participants (reducing the $60 benefit multiplier to $50 per year of service for two groups of participants—those who had accrued all of their benefits under the $60 multiplier and those who had accrued some of their benefits under the $60 multiplier—and not reducing benefits for the group of participants who had accrued all of their benefits under the $50 multiplier) is based on a reasonable application of those factors.

Example 8. (i) *Facts.* The facts are the same as in *Example 7,* except that no plan amendments have previously reduced future accruals or other benefits for active participants. Under the suspension of benefits, subject to the individual limitations on benefit suspensions, benefits for deferred vested participants, retirees, and beneficiaries who have commenced benefits are reduced, but no reduction applies to active participants. The suspension of benefits is not accompanied by any reductions in future accruals or other benefits for active participants.

(ii) *Conclusion.* The suspension of benefits is not equitably distributed across the participant and beneficiary populations. This is because, under these facts, no relevant factor (such as a previous reduction in benefits applicable only to active participants) has been reasonably selected by the plan sponsor to justify the proposed difference in treatment among the categories.

Example 9. (i) *Facts.* The facts are the same as in *Example 8,* except that the suspension of benefits provides for a reduction that applies to both active and inactive participants. However, the reduction that applies to active participants is smaller than the reduction that applies to inactive participants because the plan sponsor concludes, as explained and supported in the application for suspension, that active participants are reasonably likely to withdraw support for the plan if any larger reduction is applied.

(ii) *Conclusion.* The suspension of benefits is equitably distributed across the participant and beneficiary populations. This is because the difference in treatment between the different groups of participants is based on the extent to which active participants are reasonably likely to withdraw support for the plan, which under these facts is a relevant factor that may reasonably be selected by the plan sponsor, and the difference in treatment between the two groups of participants (applying a greater suspension to inactive than to active participants) is based on a reasonable application of that factor.

Example 10. (i) *Facts.* The plan sponsor applies for approval of a suspension of benefits. Under the suspension of benefits, subject to the individual limitations on benefit suspensions, the benefits for participants and beneficiaries attributable to service with an employer that failed to pay its full withdrawal liability are reduced by 50%. As indicated in the suspension application, the present value of the benefit reduction with respect to the former employees of one such employer is significantly greater than the unpaid withdrawal liability for that employer. Benefits for participants and beneficiaries attributable to service with all other employers are reduced by 10%.

(ii) *Conclusion.* The suspension of benefits is not equitably distributed across the participant and beneficiary populations. This is because, although the difference in treatment between the different groups of participants is based on a relevant factor that may reasonably be selected by the plan sponsor, the difference in treatment between the groups of participants is not based on a reasonable application of that factor.

Example 11. (i) *Facts.* The plan sponsor applies for approval of a suspension of benefits. Under the suspension of benefits, subject to the individual limitations on benefit suspensions, the benefits for all participants and beneficiaries are reduced by the same percentage, except that the benefits for employees and former employees of a particular employer that is actively represented on the plan's Board of Trustees are reduced by a specified lesser percentage.

(ii) *Conclusion.* The suspension of benefits is not equitably distributed across the participant and beneficiary populations. This is because, under these facts, no relevant factor has been reasonably selected by the plan sponsor to justify the difference in treatment between the two groups of participants.

Example 12. (i) *Facts.* The facts are the same as in *Example 11,* except that the particular employer whose employees and former employees are subject to the lesser benefit reduction is the union that also participates in the plan.

(ii) *Conclusion.* The suspension of benefits is not equitably distributed across the participant and beneficiary populations. This is because, under these facts, no relevant factor has been reasonably selected by the plan sponsor to justify the difference in treatment between the two groups of participants.

Example 13. (i) *Facts.* The plan sponsor applies for approval of a suspension of benefits. Under the suspension of benefits, subject to the individual limitations on benefit suspensions, the monthly benefit of all participants and beneficiaries is reduced to 110% of the monthly benefit that is guaranteed by PBGC under section 4022A of ERISA. As indicated in the suspension application, this is because the plan sponsor is applying to PBGC for a partition of the plan, which requires the plan sponsor to have implemented the maximum benefit suspensions under section 432(e)(9).

(ii) *Conclusion.* The suspension of benefits is equitably distributed across the participant and beneficiary populations.

Example 14. (i) *Facts.* The plan sponsor applies for approval of a suspension of benefits. Under the suspension of benefits, subject to the individual limitations on benefit suspensions, benefits for all participants and beneficiaries are reduced by the same percentage, except that the protection for benefits based on disability goes beyond the required disability-based limitations and also includes payments to a beneficiary of a participant who had been receiving benefits based on disability at the time of death. The suspension application indicates the rationale for this protection from reduction.

(ii) *Conclusion.* The suspension of benefits is equitably distributed across the participant and beneficiary populations because this suspension design is a reasonable application of the statutory factor in paragraph (d)(6)(ii)(B)(*4*) of this section (type of benefit).

Example 15. (i) *Facts.* The facts are the same as in *Example 3,* except that the plan does not provide for benefits based on disability. Under the suspension of benefits, less of a reduction is applied to a participant who has become disabled within the meaning of title II of the Social Security Act than to otherwise similarly situated participants and the suspension application indicates the rationale for this reduction.

(ii) *Conclusion.* The suspension of benefits is equitably distributed across the participant and beneficiary populations because a participant's disability within the meaning of title II of the Social Security Act is a factor that can reasonably be taken into account in designing a suspension of benefits and applying less of a reduction to an individual in this group is a reasonable application of that factor.

(7) *Effective date of suspension made in combination with partition.* In any case in which a suspension of benefits with respect to a plan is made in combination with a partition of the plan, the suspension of benefits may not take effect prior to the effective date of the partition. This requirement will not be satisfied if the partition order under section 4233 of ERISA has not been provided to the Secretary of the Treasury by the last day of the 225-day period described in paragraph (g)(3)(i) of this section. For purposes of the preceding sentence, a conditional approval by PBGC (within the meaning of 29 CFR 4233.12(c)) of a partition application that is conditioned only on the Secretary's issuing a final authorization to suspend is treated as a partition order.

(8) *Additional rules for plans described in section 432(e)(9)(D)(vii).* [Reserved].

(e) *Benefit improvements*—(1) *Limitations on benefit improvements.* This paragraph (e) sets forth rules for the application of section 432(e)(9)(E). A plan satisfies the criteria in section 432(e)(9)(E) only if, during the period that any suspension of benefits remains in effect, the plan sponsor does not implement any benefit improvement with respect to the plan except as provided in this paragraph (e). Paragraph (e)(2) of this section describes limitations on a benefit improvement for participants and beneficiaries who are not yet in pay status. Paragraph (e)(3) of this section describes limitations on a benefit improvement for participants and beneficiaries who are in pay status. Paragraph (e)(4) of this section provides that the limitations of this paragraph (e) generally apply in addition to other limitations on benefit increases that apply to a plan. Paragraph (e)(5) of this section defines benefit improvement.

(2) *Limitations on benefit improvements for those not in pay*

status—(i) *Equitable distribution for those in pay status and solvency projection.* During the period that any suspension of benefits under a plan remains in effect, the plan sponsor may not increase the liabilities of the plan by reason of any benefit improvement for any participant or beneficiary who was not in pay status by the first day of the plan year for which the benefit improvement takes effect, unless—

(A) The present value of the total liabilities for a benefit improvement for participants and beneficiaries whose benefit commencement dates were before the first day of the plan year for which the benefit improvement takes effect is not less than the present value of the total liabilities for a benefit improvement for participants and beneficiaries who were not in pay status by that date;

(B) The plan sponsor equitably distributes the benefit improvement among the participants and beneficiaries whose benefit commencement dates were before the first day of the plan year in which the benefit improvement is proposed to take effect; and

(C) The plan actuary certifies that after taking into account the benefit improvement, the plan is projected to avoid insolvency indefinitely.

(ii) *Rules of application*—(A) *Present value determination*—(*1*) *Actuarial assumptions and methods.* For purposes of paragraph (e)(2)(i)(A) of this section, the present value of the total liabilities for a benefit improvement is the present value as of the first day of the plan year in which the benefit improvement is proposed to take effect. The actuarial assumptions and methods used for the calculation for present values and the actuarial projections that are required under this paragraph (e)(2) must each be reasonable, and the combination of the actuarial assumptions and methods must be reasonable, taking into account the experience of the plan and reasonable expectations.

(*2*) *Increase in future accrual rate.* In the case of a benefit improvement that is an increase in the rate of future accrual, the present value determined under paragraph (e)(2)(i)(A) of this section must take into account the increase in accruals for participants and beneficiaries not yet in pay status for all future years.

(B) *Factors relevant to equitable distribution.* The evaluation of whether a benefit improvement is equitably distributed for purposes of paragraph (e)(2)(i)(B) of this section must take into account the relevant factors described in paragraph (d)(6)(ii)(B) of this section and the extent to which the benefits of the participants and beneficiaries were suspended.

(C) *Actuarial certification.* The certification in paragraph (e)(2)(i)(C) of this section must be made using the standards described in paragraphs (d)(5)(ii), (iv), and (v) of this section, substituting the plan year that includes the effective date of the benefit improvement for the plan year that includes the effective date of the suspension.

(iii) *Special rule for certain benefit increases.* The limitations of this paragraph (e) do not apply to a resumption of suspended benefits or plan amendment that increases liabilities with respect to participants and beneficiaries not in pay status by the first day of the plan year in which the benefit improvement took effect that—

(A) The Secretary of the Treasury, in consultation with PBGC and the Secretary of Labor, determines to be reasonable and which provides for only *de minimis* increases in the liabilities of the plan; or

(B) Is required as a condition of qualification under section 401 or to comply with other applicable law, as determined by the Secretary of the Treasury.

(3) *Limitation on resumption of suspended benefits only for those in pay status.* The plan sponsor may increase liabilities of the plan by eliminating some or all of the suspension that applies solely to participants and beneficiaries in pay status at the time of the resumption, provided that the plan sponsor equitably distributes the value of those resumed benefits among participants and beneficiaries in pay status, taking into account the relevant factors described in paragraph (d)(6)(ii)(B) of this section. A resumption of benefits that is described in this paragraph (e)(3) is not subject to the limitations on a benefit improvement under section 432(f) (relating to restrictions on benefit increases for plans in critical status).

(4) *Additional limitations.* Except as provided in paragraph (e)(3) of this section, the limitations on a benefit improvement under this paragraph (e) are in addition to the limitations in section 432(f) and any other applicable limitations on increases in benefits imposed on a plan.

(5) *Definition of benefit improvement*—(i) *In general.* For purposes of this paragraph (e), the term benefit improvement means, with respect to a plan, a resumption of suspended benefits, an increase in benefits, an increase in the rate at which benefits accrue, or an increase in the rate at which benefits become nonforfeitable, under the plan.

(ii) *Effect of expiration of suspension.* In the case of a suspension of benefits that expires as of a date that is specified in the plan amendment implementing the suspension, the resumption of benefits solely from the expiration of that period is not treated as a benefit improvement.

(f) *Notice requirements*—(1) *In general.* No suspension of benefits may be made pursuant to this section unless notice of the proposed suspension has been given by the plan sponsor to—

(i) All participants, beneficiaries of deceased participants, and alternate payees under the plan (regardless of whether their benefits are proposed to be suspended), except those who cannot be contacted by reasonable efforts;

(ii) Each employer who has an obligation to contribute (within the meaning of section 4212(a) of ERISA) under the plan; and

(iii) Each employee organization which, for purposes of collective bargaining, represents plan participants employed by an employer described in paragraph (f)(1)(ii) of this section.

(2) *Content of notice*—(i) *In general.* The notice described under paragraph (f)(1) of this section must contain—

(A) Sufficient information to enable a participant or beneficiary to understand the effect of any suspension of benefits, including an individualized estimate (on an annual or monthly basis) of the effect on that participant or beneficiary;

(B) A description of the factors considered by the plan sponsor in designing the benefit suspension;

(C) A statement that the application for approval of any suspension of benefits will be available on the Web site of the Department of the Treasury and that comments on the application will be accepted;

(D) Information as to the rights and remedies of plan participants and beneficiaries;

(E) If applicable, a statement describing the appointment of a retiree representative, the date of appointment of the representative, the role and responsibilities of the retiree representative, identifying information about the retiree representative (including whether the representative is a plan trustee), and how to contact the retiree representative; and

(F) Information on how to contact the Department of the Treasury for further information and assistance where appropriate.

(ii) *Description of suspension of benefits.* The notice described under paragraph (f)(1) of this section will not satisfy the requirements of paragraph (f)(2)(i) of this section unless it includes the following—

(A) To the extent that it is not possible to provide an individualized estimate on an annual or monthly basis of the quantitative effect of the suspension on a participant or beneficiary, such as in the case of a suspension that affects the payment of any future cost-of-living adjustment, that effect may be reflected in a narrative description;

(B) A statement that the plan sponsor has determined that the plan will become insolvent unless the proposed suspension takes effect, and the year in which insolvency is projected to occur without a suspension of benefits;

(C) A statement that insolvency of the plan could result in benefits lower than benefits paid under the proposed suspension and a description of the projected benefit payments upon insolvency;

(D) A description of the proposed suspension and its effect, including a description of the different categories or groups affected by the suspension, how those categories or groups are defined, and the formula that is used to calculate the amount of the proposed suspension for individuals in each category or group;

(E) A description of the effect of the proposed suspension on the plan's projected insolvency;

(F) A description of whether the suspension will remain in effect indefinitely, or the date the suspension expires if it expires by its own terms; and

(G) A statement describing the right to vote on the suspension application.

(iii) *Readability requirement.* A notice given under paragraph (f)(1) of this section must be written in a manner so as to be understood by the average plan participant.

(iv) *Model notice.* The Secretary of the Treasury will provide a model notice. The use of the model notice will satisfy the content and readability requirements of this paragraph (f)(2) with respect to the language provided in the model.

(3) *Form and manner*—(i) *Timing*—(A) *In general.* A notice under paragraph (f)(1) of this section must be given no earlier than four business days before the date on which an application is submitted and no later than two business days after the Secretary of the Treasury notifies the plan sponsor that it has submitted a complete application, as described in paragraph (g)(1)(ii) of this section.

(B) *Timing for lost participants.* If additional individuals who are entitled to notice are located after the time period in paragraph (f)(3)(i)(A) of this section has elapsed, then the plan sponsor must give notice to these individuals as soon as practicable thereafter.

(ii) *Method of delivery of notice*—(A) *Written or electronic delivery.* A notice given under paragraph (f)(1) of this section may be provided in writing. It may also be provided in electronic form to the extent that the form is reasonably accessible to persons to whom the notice is required to be provided. Permissible electronic methods include those permitted under regulations of the Department of Labor at 29 CFR 2520.104b–1(c) and those described at § 54.4980F–1, Q&A–13(c) of the Excise Tax Regulations.

(B) *No alternative method of delivery.* A notice under this paragraph (f) must be provided in written or electronic form.

(iii) *Additional information in notice.* A notice given under paragraph (f)(1) of this section is permitted to include information in addition to the information that is required under paragraph (f)(2) of this section, including, if applicable, information relating to an application for partition under section 4233 of ERISA (such as the model notice at Appendix A of 29 CFR part 4233), provided that the requirements of paragraph (f)(3)(iv) of this section are satisfied.

(iv) *No false or misleading information.* A notice given under paragraph (f)(1) of this section may not include false or misleading information (or omit information in a manner that causes the information provided to be misleading).

(4) *Other notice requirement.* Any notice given under paragraph (f)(1) of this section satisfies the requirement for notice of a significant reduction in benefits described in section 4980F that would otherwise be required as a result of that suspension of benefits. To the extent that there are other reductions that accompany a suspension of benefits, such as a reduction in the future accrual rate described in section 4980F for active participants or a reduction in adjustable benefits under section 432(e)(8), notice that satisfies the requirements (including the applicable timing requirements) of section 4980F or section 432(e)(8), as applicable, must be provided.

(5) *Examples.* The following examples illustrate the requirement in paragraph (f)(1)(i) of this section to give notice to all participants, beneficiaries of deceased participants, and alternate payees, except those who cannot be contacted by reasonable efforts.

Example 1. (i) *Facts.* A plan sponsor distributes notice of a proposed suspension of benefits to plan participants, beneficiaries of deceased participants, and alternate payees by mailing the notice to their last known mailing addresses, using the same information that it used to send the most recent annual funding notice. Of 5,000 such notices, 300 were returned as undeliverable. The plan sponsor takes no additional steps to contact the individuals for whom the notice was returned as undeliverable.

(ii) *Conclusion.* The plan sponsor did not make any effort beyond the initial mailing to locate the 300 individuals for whom the notice was returned as undeliverable. Therefore, the plan sponsor did not satisfy the requirement to provide notice to all participants, beneficiaries of deceased participants, and alternate payees under the plan (regardless of whether their benefits are proposed to be suspended), except those who cannot be contacted by reasonable efforts.

Example 2.— (i) *Facts.* The facts are the same as *Example 1,* but the plan sponsor contacts the bargaining parties for the plan and the plan administrators of any other employee benefit plans that the plan sponsor reasonably believes may have information useful for locating the missing individuals, and the plan sponsor requests contact information for the missing individuals. The plan sponsor then uses an Internet search tool, a credit reporting agency, and a commercial locator service to search for individuals for whom it was not able to obtain updated information from bargaining parties. Through these efforts, the plan sponsor locates the updated addresses of 250 of the 300 individuals whom it previously failed to contact. The plan sponsor mails notices to those individuals within one week of locating them.

(ii) *Conclusion*. By using effective search methods to find the previously missing individuals and promptly mailing the notice of suspension to them, the plan sponsor has satisfied the requirement to provide notice to all participants, beneficiaries of deceased participants, and alternate payees under the plan (regardless of whether their benefits are proposed to be suspended), except those who cannot be contacted by reasonable efforts.

(g) *Approval or denial of an application for suspension of benefits*—(1) *Application*—(i) *In general.* The plan sponsor of a plan in critical and declining status for a plan year that seeks to suspend benefits must submit an application for approval of the proposed suspension of benefits to the Secretary of the Treasury. The Secretary of the Treasury, in consultation with PBGC and the Secretary of Labor, will approve a complete application described in paragraph (g)(1)(ii) of this section upon finding that—

(A) The plan is eligible for the proposed suspension described in the application;

(B) The plan actuary and plan sponsor satisfy the requirements of section 432(e)(9)(C) in accordance with the rules of paragraph (c) of this section;

(C) The design of the proposed suspension described in the application satisfies the criteria of section 432(e)(9)(D) in accordance with the rules of paragraphs (d) of this section; and

(D) The plan sponsor satisfies the requirements of section 432(e)(9)(E) and (F) in accordance with the rules of paragraphs (e) and (f) of this section.

(ii) *Complete application.* After receiving a submission, the plan sponsor will be notified within two business days whether the submission constitutes a complete application. A complete application will be treated as submitted on the date that it was originally submitted to the Secretary of the Treasury. If a submission is incomplete, the notification will inform the plan sponsor of the information that is needed to complete the submission and give the plan sponsor a reasonable opportunity to submit a complete application. In such a case, the complete application will be treated as submitted on the date on which the additional information needed to complete the application is submitted to the Secretary of the Treasury.

(iii) *Submission of application.* An application described in this paragraph (g)(1) must be submitted electronically in a searchable format.

(iv) *Requirements for application.* Additional guidance that may be necessary or appropriate with respect to applications described in this paragraph (g)(1), including procedures for submitting applications and the information required to be included in a complete application, may be published in the form of revenue procedures, notices, or other guidance in the Internal Revenue Bulletin.

(v) *Requirement to provide adequate time to process application*—(A) *General rule.* An application for suspension that is not submitted in combination with an application to PBGC for a plan partition under section 4233 of ERISA generally will not be accepted unless the proposed effective date of the suspension is at least nine months from the date on which the application is submitted.

(B) *Earlier effective date in appropriate circumstances.* Nothwithstanding paragraph (g)(1)(v)(A) of this section, in appropriate circumstances the Secretary of the Treasury, in consultation with PBGC and the Secretary of Labor, may permit a proposed suspension to have an earlier effective date.

(vi) *Plan sponsors that also apply for partition.* See part 4233 of the PBGC regulations for a coordinated application process that applies in the case of a plan sponsor that is submitting an application for suspension in combination with an application to PBGC for a plan partition under section 4233 of ERISA.

(2) *Solicitation of comments*—(i) *In general.* Not later than 30 days after receipt of a complete application described in paragraph (g)(1) of this section—

(A) The application for approval of the suspension of benefits will be published on the Web site of the Department of the Treasury; and

(B) The Secretary of the Treasury will publish a notice in the **Federal Register** soliciting comments from contributing employers, employee organizations, and participants and beneficiaries of the plan for which an application was made, and other interested parties.

(ii) *Public comments.* The notice described in paragraph (g)(2)(i)(B) of this section will generally request that comments be submitted no later than 45 days after publication of that notice in the **Federal Register**, but the notice may specify a different deadline for comments in appropriate circumstances. Comments received in response to this notice will be made publicly available.

(3) *Special rules in the case of revision to proposed suspension*—(i) *Resubmission review available in certain circumstances.* The Secretary of the Treasury (in consultation with PBGC and the Secretary of Labor) has the discretion, in appropriate circumstances, to permit the plan sponsor to submit a revision of a proposed suspension that had been withdrawn for resubmission review. With respect to an application that is accepted for resubmission review—

(A) The rules of paragraph (g)(1)(v)(B) of this section will apply;

(B) The limitations of paragraph (d) of this section with respect to the revised proposed suspension may be applied using the same actuarial data (including the same fair market value of the plan assets) as was used in the initial application;

(C) The revision to the proposed suspension will be published, and comments solicited, in accordance with paragraph (g)(2) of this section; and

(D) The plan sponsor must provide notice of the revised proposed suspension in accordance with the requirements of paragraph (g)(3)(ii) of this section.

(ii) *Requirement to provide updated notice to affected participants*—(A) *General rule.* Except as provided in paragraph (g)(3)(ii)(B) of this section, a plan sponsor that revises a proposed suspension in accordance with this paragraph (g)(3) must provide notice of the suspension in accordance with the rules of paragraph (f) of this section.

(B) *Treatment of participants who are not affected by the revision.* If the revision to the proposed suspension changes neither the amount of the suspension as initially proposed nor the effective date of the proposed suspension for an affected individual, then the Secretary of the Treasury (in consultation with PBGC and the Secretary of Labor) may permit the plan sponsor to provide a simplified version of the notice of the suspension to that individual. For this purpose, the effective date of a suspension is determined without taking into account the second sentence of paragraph (a)(4)(iii)(C) of this section.

(4) *Approval or denial*—(i) *Deemed approval.* A complete application described in paragraph (g)(1)(ii) of this section will be deemed approved unless, within 225 days following the date that the complete application is submitted, the Secretary of the Treasury notifies the plan sponsor that its application does not satisfy one or more of the requirements described in this paragraph (g).

(ii) *Notice of denial.* If the Secretary of the Treasury denies a plan sponsor's application, the notification of the denial will detail the specific reasons for the denial, including reference to the specific requirement not satisfied.

(iii) *Special rules for systemically important plans.* If the Secretary of the Treasury approves a plan sponsor's application and the Secretary expects that the plan is or may be a systemically important plan (as defined in paragraph (h)(5)(iv) of this section), the Secretary will so notify the plan sponsor. In that case, and in the event of a vote to reject the suspension (as described in paragraph (h)(4) of this section), the plan sponsor may be required to supply individual participant data and any actuarial analyses that the Secretary may request, in order to assist the Secretary in determining whether to permit the implementation of the suspension that was approved by the Secretary but rejected by a majority of the eligible voters or the implementation of a modification of that suspension.

(iv) *Agreement to stay 225-day period.* The Secretary of the Treasury and the plan sponsor may mutually agree in writing to stay the 225-day period described in paragraph (g)(3)(i) of this section.

(5) *Consideration of certain factors.* In evaluating whether the plan sponsor has satisfied the requirement of paragraph (c)(3)(i)(A) of this section, the Secretary of the Treasury, in consultation with PBGC and the Secretary of Labor, will review the plan sponsor's consideration

of each of the factors under paragraph (c)(3)(ii) of this section (and any other factor that the plan sponsor considered).

(6) *Standard for accepting plan sponsor determinations.* In evaluating the plan sponsor's application, the Secretary of the Treasury will accept the plan sponsor's determinations in paragraph (c)(3) of this section unless the Secretary concludes, in consultation with PBGC and the Secretary of Labor, that the determinations were clearly erroneous.

(7) *Plan sponsor certifications with respect to plan amendments.* The plan sponsor will not satisfy the requirements of paragraph (g)(1)(i)(B) and (D) of this section unless the plan sponsor certifies that if the plan sponsor receives final authorization to suspend as described in paragraph (h)(6) of this section with respect to the proposed benefit suspension (or, in the case of a systemically important plan, a proposed or modified benefit suspension), the plan sponsor chooses to implement the suspension, and the plan sponsor adopts the amendment described in paragraph (a)(1) of this section, then it will timely amend the plan to provide that—

(i) If the plan sponsor fails to make the annual determinations under section 432(e)(9)(C)(ii), then the suspension of benefits will cease as of the first day of the first plan year following the plan year in which the plan sponsor fails to make the annual plan sponsor determinations in paragraph (c)(4) of this section; and

(ii) Any future benefit improvement must satisfy the requirements of section 432(e)(9)(E).

(8) *Special Master.* The Secretary of the Treasury may appoint a Special Master for purposes of this section. If a Special Master is appointed, the Special Master will coordinate the implementation of this section and the review of applications for the suspension of benefits and other appropriate documents, and will provide recommendations to the Secretary of the Treasury with respect to decisions required under this section.

(h) *Participant vote on proposed benefit reduction*—(1) *Requirement for vote*—(i) *In general.* If an application for suspension is approved under paragraph (g) of this section, then the Secretary of the Treasury, in consultation with PBGC and the Secretary of Labor, will administer a vote as described in section 432(e)(9)(H) and this paragraph (h). A suspension of benefits may not take effect before the vote and may only take effect after a final authorization to suspend benefits under paragraph (h)(6) of this section.

(ii) *Communication by plan sponsor.* The plan sponsor must take reasonable steps to inform eligible voters about the proposed suspension. This includes all eligible voters who may be contacted by reasonable efforts in accordance with paragraph (f)(1) of this section. Any eligible voter whom the plan sponsor has been able to locate through these means (or who has otherwise been located by the plan sponsor) must be—

(A) Included on the voting roster described in paragraph (h)(3)(iii)(B) of this section; and

(B) Sent a ballot described in paragraph (h)(3) of this section.

(iii) *Eligible voters*—(A) *General definition.* For purpose of this paragraph (h), the term "eligible voters" means all plan participants (that is, active plan participants, deferred vested participants, and retirees) and beneficiaries of deceased participants.

(B) *Voting roster.* The voting roster includes those eligible voters to whom the notices described in paragraph (f) of this section were sent. If there is a plan participant or beneficiary who did not receive a notice but who is subsequently located by the plan sponsor, that individual must be included on the roster. Similarly, if an individual becomes a plan participant after the date the notices were sent, then the individual must be included on the roster. If a plan sponsor learns after the date the notices described in paragraph (f) of this section were sent that an eligible voter has died, then that deceased individual must not be included on the roster (but if that participant has a beneficiary entitled to benefits under the plan, the beneficiary must be added to the roster).

(2) *Participant vote*—(i) *In general.* The participant vote described in paragraph (h)(1)(i) of this section requires completion of the following steps—

(A) Distribution of the ballot package described in paragraph (h)(2)(iii) of this section to the eligible voters;

(B) Voting by eligible voters and collection and tabulation of the votes, as described in paragraph (h)(2)(iv) of this section; and

(C) Determination of whether a majority of the eligible voters has voted to reject the suspension, as described in paragraph (h)(2)(v) of this section.

(ii) *Designation of service provider for limited functions.* The Secretary of the Treasury is permitted to designate one or more service providers to perform, under the supervision of the Secretary, any of the functions of the Secretary described in paragraphs (h)(2)(i)(A) and (B) of this section. If the Secretary designates a service provider to perform these functions then the service provider will provide the Secretary with a written report of the results of the vote, including (as applicable)—

(A) The number of ballot packages distributed to eligible voters;

(B) The number of eligible voters to whom ballot packages have not been provided (because the individuals could not be located);

(C) The number of eligible voters who voted (specifying the number of affirmative votes and the number of negative votes cast); and

(D) Any other information that the Secretary requires.

(iii) *Distribution of the ballot package to the eligible voters*—(A) *Ballot package.* The ballot package distributed to each eligible voter consists of—

(*1*) A ballot, approved under paragraph (h)(3)(iii) of this section, which contains the items described in section 432(e)(9)(H)(iii) and paragraph (h)(3)(i) of this section; and

(*2*) A voter identification code assigned to the eligible voter for use in voting.

(B) *Plan sponsor responsibilities*—(*1*) *In general.* This paragraph (h)(2)(iii)(B) sets forth the responsibilities of the plan sponsor with respect to the distribution of the ballot package to the eligible voters.

(*2*) *Furnish information regarding eligible voters.* No later than 7 days following the date the Secretary of the Treasury has approved an application for a suspension of benefits under paragraph (g) of this section, the plan sponsor must furnish the following—

(*i*) The voting roster described in paragraph (h)(1)(iii)(B) of this section;

(*ii*) Plan information (such as participant identification codes used by the plan) to enable the Secretary of the Treasury to verify the identity of each eligible voter;

(*iii*) For each eligible voter on the voting roster, the last known mailing address (or, if the plan sponsor has been unable to locate that individual using the standards that apply for purposes of paragraph (f)(1)(i) of this section, an indication that the individual could not be located through reasonable efforts);

(*iv*) Current electronic mailing addresses for those eligible voters identified in paragraph (h)(2)(iii)(B)(*4*) of this section; and

(*v*) The individualized estimates described in paragraph (f)(2)(i)(A) of this section (or, if an individualized estimate is no longer accurate for an eligible voter, a corrected version of that estimate).

(*3*) *Communication with eligible voters.* In accordance with section 432(e)(9)(H)(iv) and paragraph (h)(1)(ii) of this section, the plan sponsor is responsible for communicating with eligible voters, which includes—

(*i*) Notifying the eligible voters described in paragraph (h)(2)(iii)(B)(*4*) of this section that a ballot package will be mailed to them by first-class U.S. mail; and

(*ii*) Making reasonable efforts (using the standards that apply for purposes of paragraph (f)(1)(i) of this section) as necessary to locate eligible voters for whom the plan sponsor has received notification that the mailed ballot packages are returned as undeliverable (so that ballot packages can be sent to those eligible voters).

(*4*) *Eligible voters to receive electronic notification.* Those eligible voters whom the plan sponsor must notify electronically are—

(*i*) Eligible voters who previously received the notice described in paragraph (f) of this section in electronic form (as permitted under paragraph (f)(3)(ii) of this section), and

(*ii*) Any other eligible voters who regularly receive plan-related communications from the plan sponsor in electronic form.

(*5*) *Method of notifying certain eligible voters.* The notification described in paragraph (h)(2)(iii)(B)(*3*)(*i*) of this section for an eligible voter must be made using the electronic form normally used to send plan-related communications to that voter (or the form used to provide the notice in paragraph (f) of this section, if different). The plan sponsor must send this notification promptly after being informed of the ballot distribution date (within the meaning of paragraph (h)(2)(iii)(D) of this section) and the notification must include the ballot distribution date.

(*6*) *Pay costs associated with distribution.* The plan sponsor is responsible for paying all costs associated with printing, assembling, and distributing the ballot package, including postage.

(C) *Required method of distributing ballot package.* Ballot packages must be distributed to eligible voters by first-class U.S. mail. A supplemental copy of the mailed ballot package may also be sent by an electronic communication to an eligible voter who has consented to receive electronic communications.

(D) *Timing.* Ballot packages will be distributed to eligible voters no later than 30 days after the Secretary of the Treasury has approved an application for a suspension of benefits under paragraph (g) of this section. The date on which the ballot packages are mailed to the eligible voters is referred to as the ballot distribution date.

(iv) *Collection and tabulation of votes cast by eligible voters*—(A) *Voting period.* The voting period is the period during which a vote received from an eligible voter will be counted. The voting period begins on the ballot distribution date. The voting period generally remains open until the 30th day following the date the Secretary of the Treasury has approved an application for a suspension of benefits under paragraph (g) of this section. However, the voting period will not close earlier than 21 days after the ballot distribution date. In addition, the Secretary (in consultation with PBGC and the Secretary of Labor) may specify a later date to end the voting period in appropriate circumstances.

(B) *Automated voting system must be provided.* An automated voting system that meets the requirements of paragraph (h)(2)(iv)(C) of this section must be made available to voters for casting their votes. In appropriate circumstances, the Secretary may, in consultation with PBGC and the Secretary of Labor, allow voters to cast votes by mail in lieu of using the automated voting system.

(C) *Automated voting system.* An automated voting system meets the requirements of this paragraph (h)(2)(iv)(C) only if the system—

(*1*) Collects votes cast by eligible voters both electronically (through a Web site) and telephonically (through a toll-free number allowing voters to cast their votes using both a touch-tone voting system and an interactive voice response system); and

(*2*) Accepts only votes cast during the voting period by an eligible voter who provides the eligible voter's identification code described in paragraph (h)(2)(iii)(A)(*2*) of this section.

(D) *Policies and procedures.* The Secretary of the Treasury (in consultation with PBGC and the Secretary of Labor) may establish such policies and procedures as may be necessary to facilitate the administration of the vote under this paragraph (h)(2). These policies and procedures may include, but are not limited to, establishing a process for an eligible voter to challenge the vote.

(v) *Determination of whether a majority of the eligible voters has voted to reject the suspension.* Within 7 calendar days after the end of the voting period, the Secretary of the Treasury (in consultation with PBGC and the Secretary of Labor) will—

(A) Certify that a majority of all eligible voters has voted to reject the suspension that was approved under paragraph (g) of this section, or

(B) Issue a final authorization to suspend as described in paragraph (h)(6) of this section.

(3) *Ballots*—(i) *In general.* The plan sponsor must provide a ballot for the vote that includes the following—

(A) A description of the proposed suspension and its effect, including the effect of the suspension on each category or group of individuals affected by the suspension and the extent to which they are affected;

(B) A description of the factors considered by the plan sponsor in designing the benefit suspension, including but not limited to the factors in paragraph (d)(6)(ii) of this section;

(C) A description of whether the suspension will remain in effect indefinitely or will expire by its own terms (and, if it will expire by its own terms, when that will occur);

(D) A statement from the plan sponsor in support of the proposed suspension;

(E) A statement in opposition to the proposed suspension compiled from comments received pursuant to the solicitation of comments pursuant to paragraph (g)(2) of this section;

(F) A statement that the proposed suspension has been approved by the Secretary of the Treasury, in consultation with PBGC and the Secretary of Labor;

(G) A statement that the plan sponsor has determined that the plan will become insolvent unless the proposed suspension takes effect (including the year in which insolvency is projected to occur without a suspension of benefits), and an accompanying statement that this determination is subject to uncertainty;

(H) A statement that insolvency of the plan could result in benefits lower than benefits paid under the proposed suspension and a description of the projected benefit payments in the event of plan insolvency;

(I) A statement that insolvency of PBGC would result in benefits lower than benefits otherwise paid in the case of plan insolvency;

(J) A statement that the plan's actuary has certified that the plan is projected to avoid insolvency, taking into account the proposed suspension of benefits (and, if applicable, a proposed partition of the plan), and an accompanying statement that the actuary's projection is subject to uncertainty;

(K) A statement that the suspension will go into effect unless a majority of all eligible voters vote to reject the suspension and that, therefore, a failure to vote has the same effect on the outcome of the vote as a vote in favor of the suspension;

(L) A copy of the individualized estimate described in paragraph (f)(2)(i)(A) of this section (or, if that individualized estimate is no longer accurate, a corrected version of that estimate); and

(M) A description of the voting procedures, including the deadline for voting.

(ii) *Additional rules*—(A) *Readability requirement.* A ballot provided under section 432(e)(9)(H)(iii), in accordance with the rules of paragraph (h)(3)(i) of this section, must be written in a manner that is readily understandable by the average plan participant.

(B) *No false or misleading information.* A ballot provided under section 432(e)(9)(H)(iii), in accordance with the rules of paragraph (h)(3)(i) of this section, may not include false or misleading information (or omit information in a manner that causes the information provided to be misleading).

(iii) *Ballot must be approved.* Any ballot provided under section 432(e)(9)(H)(iii), in accordance with the rules of paragraph (h)(3)(i) of this section, must be approved by the Secretary of the Treasury, in consultation with PBGC and the Secretary of Labor, before it is provided.

(iv) *Statement in opposition to the proposed suspension.* The statement in opposition to the proposed suspension that is prepared from comments received on the application, as required under section 432(e)(9)(H)(iii)(II), will be compiled by the Secretary of Labor and will be written in accordance with the rules of paragraph (h)(3)(ii) of this section. If no comments in opposition are received, the statement in opposition to the proposed suspension will include a statement indicating that there were no such comments.

(v) *Model ballot.* Model language for use in the ballot may be published in the Internal Revenue Bulletin.

(4) *Implementing suspension following vote*—(i) *In general.* Unless a majority of all eligible voters vote to reject the suspension that was approved under paragraph (g) of this section, the suspension will be permitted to take effect. If a majority of all eligible voters vote to reject the suspension that was approved under paragraph (g) of this section, a suspension of benefits will not be permitted to take effect except as provided under paragraph (h)(5)(iii) of this section relating to the implementation of a suspension for a systemically important plan (as defined in paragraph (h)(5)(iv) of this section).

(ii) *Effect of not sending ballot.* Any eligible voters to whom ballots have not been provided (because the individuals could not be located) will be treated as voting to reject the suspension at the same rate (in other words, in the same percentage) as those to whom ballots have been provided.

(5) *Systemically important plans*—(i) *In general.* If a majority of all eligible voters vote to reject the suspension that was approved under paragraph (g) of this section, the Secretary of the Treasury will consult with PBGC and the Secretary of Labor to determine if the plan is a systemically important plan. This determination will be made no later than 14 days after the results of the vote are certified.

(ii) *Recommendations from Participant and Plan Sponsor Advocate.* If the plan is determined to be a systemically important plan, then, no later than 44 days after the results of the vote are certified, the Participant and Plan Sponsor Advocate selected under section 4004 of ERISA may submit recommendations to the Secretary of the Treasury with respect to the suspension that was approved under paragraph (g) of this section or any modifications to the suspension.

(iii) *Implementation of original or modified suspension by systemically important plans.* If a plan is a systemically important plan for which a majority of all eligible voters vote to reject the suspension that was approved under paragraph (g) of this section, then the Secretary of the Treasury must determine whether to permit the implementation of the suspension that was approved under paragraph (g) of this section or whether to permit the implementation of a modification of that suspension. Under any such modification, the plan must be projected to avoid insolvency in accordance with section 432(e)(9)(D)(iv). No later than 60 days after the results of a vote to reject a suspension are certified, the Secretary of the Treasury will notify the plan sponsor that the suspension or modified suspension is permitted to be implemented.

(iv) *Systemically important plan defined*—(A) *In general.* For purposes of this paragraph (h)(5), a systemically important plan is a plan with respect to which PBGC projects that the present value of its financial assistance payments will exceed $1.0 billion (adjusted in accordance with paragraph (h)(5)(iv)(B) of this section to the calendar year in which the application is submitted) if the suspension is not implemented.

(B) *Indexing.* For calendar years beginning after 2015, the dollar amount specified in paragraph (h)(5)(iv)(A) of this section will be replaced with an amount equal to the product of the dollar amount and a fraction, the numerator of which is the contribution and benefit base (determined under section 230 of the Social Security Act) for the preceding calendar year and the denominator of which is the contribution and benefit base for calendar year 2014. If the amount otherwise determined under this paragraph (h)(5)(iv)(B) is not a multiple of $1.0 million, the amount will be rounded to the next lowest multiple of $1.0 million.

(6) *Final authorization to suspend*—(i) *In general.* In any case in which a suspension is permitted to take effect following a vote pursuant to section 432(e)(9)(H)(ii) and paragraph (h)(4) of this section, the Secretary of the Treasury, in consultation with PBGC and the Secretary of Labor, will issue a final authorization to suspend with respect to the suspension not later than seven days after the vote.

(ii) *Systemically important plans.* In any case in which a suspension is permitted to take effect following a determination under paragraph (h)(5) of this section that the plan is a systemically important plan, the Secretary of the Treasury, in consultation with PBGC and the Secretary of Labor, will issue a final authorization to suspend, at a time sufficient to allow the implementation of the suspension prior to the end of the 90-day period beginning on the date the results of the vote are certified.

(iii) *Plan partitions.* Notwithstanding any other provision of this section, in any case in which a suspension of benefits with respect to a plan is made in combination with a partition of the plan, the suspension of benefits is not permitted to take effect prior to the effective date of the partition.

(i) [Reserved].

(j) *Effective/applicability date.* This section applies with respect to suspensions for which the approval or denial is issued on or after April 26, 2016 and, in the case of a systemically important plan, any modification described in paragraph (h)(5)(iii) of this section that is implemented on or after April 26, 2016.

Section 1.432(e)(9)–1T [Removed]

■ **Par. 3.** Section 1.432(e)(9)–1T is removed.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: April 21, 2016.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

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Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 622

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Management Measures; Amendment 28; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 130919819–6040–02]

RIN 0648–BD68

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Management Measures; Amendment 28

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement management measures described in Amendment 28 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), as prepared by the Gulf of Mexico Fishery Management Council (Council) (Amendment 28). Amendment 28 and this final rule revise the Gulf of Mexico (Gulf) red snapper commercial and recreational sector allocations of the stock annual catch limits (ACLs). As a result of the revised sector allocations, this final rule revises the red snapper commercial and recreational quotas (which are equivalent to the ACLs) and the recreational annual catch targets (ACTs). This final rule also sets the Federal charter vessel/headboat and private angling component quotas and ACTs based on the revised recreational sector ACLs and ACTs. The purpose of this final rule and Amendment 28 is to reallocate the Gulf red snapper harvest consistent with the 2014 red snapper assessment update while ensuring the allowable catch and recovery benefits from the rebuilding red snapper stock are fairly and equitably allocated between the commercial and recreational sectors.

DATES: This final rule is effective May 31, 2016.

ADDRESSES: Electronic copies of Amendment 28, which includes an environmental impact statement (EIS), a fishery impact statement, a Regulatory Flexibility Act (RFA) analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/reef_fish/2013/am28/index.html.*

FOR FURTHER INFORMATION CONTACT: Peter Hood, Southeast Regional Office, NMFS, telephone: 727–824–5305; email: *Peter.Hood@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

NMFS and the Council manage the Gulf reef fish fishery under the FMP. The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management (Magnuson-Stevens) Act.

On December 24, 2015, NMFS published a notice of availability for Amendment 28 and requested public comment (80 FR 80310). On January 25, 2016, NMFS published a proposed rule for Amendment 28 and requested public comment (81 FR 4010). The proposed rule and Amendment 28 outline the rationale for the actions contained in this final rule. A summary of the actions implemented by Amendment 28 and this final rule is provided below.

The Gulf red snapper stock is currently overfished and is under a rebuilding plan projected to end in 2032. Consistent with the rebuilding plan, both the commercial and recreational quotas have been allowed to increase as the red snapper stock has recovered. The red snapper commercial and recreational ACLs are equal to the applicable quotas.

The Magnuson-Stevens Act requires that in allocating fishing privileges among fishermen, such allocation shall be fair and equitable to all such fishermen, reasonably calculated to promote conservation, and carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges. For stocks like red snapper, which are subject to a rebuilding plan, the Act requires that harvest restrictions and recovery benefits be allocated fairly and equitably among the fishing sectors. These mandates are intended to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

The purpose of Amendment 28 is to reallocate red snapper harvest from the commercial sector to the recreational sector, consistent with the 2014 red snapper update assessment, to ensure that the allowable catch and recovery benefits from a rebuilding stock are fairly and equitably allocated between the sectors. The current commercial allocation is reduced from 51 percent to 48.5 percent of the stock ACL and the recreational allocation is increased from 49 percent to 51.5 percent of the stock ACL. This shift in allocation is based on the increase in the total allowable harvest attributable to the calibration of Marine Recreational Information Program (MRIP) catch estimates that were used in a 2014 update assessment. This final rule implements the shift in allocation by modifying the commercial and recreational quotas as well as recreational component quotas consistent with the revised red snapper allocation. This final rule also revises the applicable ACTs. All weights described in this final rule are in round (whole) weight.

Allocation

Amendment 28 revises the Gulf red snapper allocation to 48.5 percent of the stock ACL to the commercial sector and 51.5 percent of the stock ACL to the recreational sector. This shift in allocation is intended to help maintain a fair and equitable distribution of recovery benefits by recognizing that future recreational harvest will be monitored based on an improved methodology that result in higher landings estimates. This allocation is also reasonably calculated to promote conservation because the resulting commercial and recreational quotas keep the harvest under the overfishing limit, new accountability measures that have been implemented for the recreational sector are constraining harvest to the recreational quota, and the shift in allocation is not expected to affect the speed of recovery to the Gulf-wide management rebuilding target.

Quotas, ACLs, and ACTs

Given the red snapper stock ACLs of 13.96 million lb (6.33 million kg) for the 2016 fishing year and 13.74 million lb (6.23 million kg) for the 2017 fishing year, this final rule revises the commercial quota to 6.768 million lb (3.070 million kg) and 6.664 million lb (3.023 million kg) for the 2016 and 2017 fishing years and the recreational quota to 7.192 million lb (3.262 million kg) and 7.076 million lb (3.210 million kg) for the 2016 and 2017 fishing years. Because this final rule to implement Amendment 28 and reallocate the red snapper stock ACL was due to occur after January 1, 2016, a framework action was developed by the Council and implemented by NMFS that held back the percentage of the 2016 commercial quota necessary to implement Amendment 28 in 2016 (80 FR 73999, November 27, 2015). The revised commercial quota for 2016 reflects the portion of the quota held back on January 1, 2016.

For the recreational sector, the ACT is set 20 percent less than the recreational quota and result in ACTs of 5.754 million lb (2.610 million kg) for 2016 and 5.661 million lb (2.568 million kg) for 2017. As described in Amendment 40 to the FMP, the recreational quota and ACT are further divided into Federal charter vessel/headboat and private angling component quotas and ACTs based on an allocation of 42.3 percent to the Federal charter vessel/headboat component and 57.7 percent to the private angling component (80 FR 22422, April 22, 2015). As a result, this final rule sets the 2016 and 2017 Federal charter vessel/headboat component quotas at 3.042 million lb (1.380 million kg) and 2.993 million lb (1.358 million kg), and the component ACTs at 2.434 million lb (1.104 million kg) and 2.395 million lb (1.086 million kg), respectively. The rule also sets the 2016 and 2017 private angling component quotas at 4.150 million lb (1.882 million kg) and 4.083 million lb (1.852 million kg), and the component ACTs at 3.320 million lb (1.506 million kg) and 3.266 million lb (1.481 million kg), respectively. The 2016 and 2017 season lengths for each component will be determined using the revised component ACTs.

Comments and Responses

A total of 143 comments were received on Amendment 28 and the proposed rule, including comments from individuals, 1 non-governmental organization, and 5 fishing associations. NMFS received 26 comments in opposition to Amendment 28 or the proposed rule and 25 comments in support of Amendment 28 and the proposed rule. Comments in support of the action state that providing more red snapper to the recreational sector is needed, but many also state that more fish should have been allocated to the recreational sector than the allocation in Amendment 28. In addition to these comments, a minority report was submitted by 4 of the 5 members of the Council who voted against approval of Amendment 28.

The remaining comments either expressed a general frustration with red snapper management or suggested other methods to manage red snapper fishing. Comments in this category suggested: Giving management of red snapper to the Gulf states, rescinding the establishment of the Federal for-hire and private angling components, using tags to track the red snapper recreational harvest, and managing red snapper as a game fish (*i.e.,* no commercial harvest). Although these measures could be developed in another action, Amendment 28 does not address these topics because they are outside the scope of this action. Specific comments related to the actions contained in the amendment and the rule as well as NMFS' respective responses, are summarized below.

Comment 1: Amendment 28 violates 407(d)(2) of the Magnuson-Stevens Act.

Response: NMFS disagrees. In the proposed rule, NMFS made a preliminary determination that Amendment 28 is consistent with section 407(d)(2) of the Magnuson-Stevens Act, concluding that to give effect to all of the provisions of the statute: (1) The Council complied with the mandates of section 407(d)(2) by establishing a recreational quota in 1997 that reflected the previously established allocation; and (2) that this provision does not prohibit future action to adjust the allocations as necessary to ensure consistency with the other general requirements of the Magnuson-Stevens Act, such as National Standard 2, National Standard 4, and section 303(a)(14).

The comment suggests that this preliminary determination is wrong because: (1) Section 407(d) expressly refers to "any fishery management plan, plan amendment, or regulation submitted . . . after the date of the enactment of the Sustainable Fisheries Act"; (2) Congress did not remove the provision when the Magnuson-Stevens Act was reauthorized in 2007 and also added section 303A(h) as part of the new provisions addressing limited access privilege programs, which states that nothing in the Magnuson-Stevens Act or reauthorization shall be construed to require a reallocation; and (3) to the extent the more general provision of the Magnuson-Stevens Act are in conflict with section 407(d)(2), that specific provision must control. However, as NMFS previously described, Section 407(d)(2) must be read in context with the rest of section 407(d) as well as the Magnuson-Stevens Act as a whole. The commenter's interpretation of subdivision (d)(2) would prohibit any adjustments to an allocation that was established over 25 years ago even when better scientific data reflects a more complete understanding of historical recreational landings. This interpretation is not consistent with subdivision (d) as a whole, which expressly contemplates specific action to address the lack of a recreational quota but does not speak to future adjustments to that allocation. The specific language in section 407(d)(2) is not in conflict with the other general provisions of the Magnuson-Stevens Act because all of the provisions can be read as a consistent whole, with effect given to every part of the statute. Further, there is nothing that indicates any intent to exclude the allocations of red snapper from these general requirements, and it is clear that Congress knew how to make such an exception. For example, the general referendum requirements in section 303A(c)(6)(D) address the referendum requirements in section 407(c), providing: "The provisions of section 407(c) of this Act shall apply in lieu of this subparagraph for an individual fishing quota program for the Gulf of Mexico commercial red snapper fishery." 16 U.S.C. 1853a(c)(6)(D)(iii).

Comment 2: Amendment 28 is not fair and equitable as required by National Standard 4 and Magnuson-Stevens Act Section 303(a)(14) because the reallocation unfairly penalizes the commercial sector, which has not exceeded the commercial quota since the implementation of the IFQ program and because Amendment 28 fails to address the economic impact of the harvest restrictions or recovery benefits on the participants in each of the commercial, recreational, and charter fishing sectors.

Response: National Standard 4 requires, in relevant part, that any allocation be fair and equitable, and reasonably calculated to promote conservation. Section 303(a)(14) requires that any rebuilding plan that reduces harvest in a fishery allocate harvest restrictions and recovery benefits fairly and equitably among the commercial, private recreational, and charter fishing components. As described in the proposed rule, the allocation is fair and equitable because it addresses changes in the methodology in collecting recreational landings information that indicate recreational harvests have been underestimated and that the red snapper stock is more productive than previously thought. Allocating the quantifiable increase in the total allowable harvest attributable to the calibration to the recreational sector is a straightforward way to reconcile prior underestimates with the result of the revised survey methodology that recognizes more reliable higher recreational catch estimates. Thus, this shift in allocation is intended to help maintain a fair and equitable distribution of recovery benefits.

An economic analysis of all alternatives considered in Amendment 28, including those based on MRIP recalibration (Alternatives 8 and 9), has been included in the EIS integrated with Amendment 28. For each alternative in the amendment, losses to the commercial sector and potential gains to the recreational sector have been quantified to the extent possible. The MRIP recalibration found that the red snapper stock productivity was previously underestimated, implying that the stock ACL in previous years could have been higher. It should be stressed, however, that the setting of red snapper commercial and recreational ACLs in previous years and accompanying economic analysis were based on the best information available at that time. Subsequently, information from the MRIP calibration, ultimately determined to be the best scientific information available, became available but could not have been previously anticipated. Similarly, neither could potential economic effects, including changes in economic activities, to either sector arising from such information. The recreational sector may have benefited from exceeding its quota but the extent of these benefits was constrained by the shortened fishing season. In the future, recreational overages would be limited due to the accountability measure changes for the sector implemented in 2015 (80 FR 14328, March 19, 2015). Since 2007, the commercial sector has benefited from the introduction of the IFQ system despite being effectively constrained to its quota. The MRIP recalibration has resulted in increasing the red snapper stock ACL, benefiting both the commercial and recreational sectors. Given the higher stock ACL, the proposed reallocation would increase the benefits to the recreational sector and would limit, but not eliminate, the benefit increases to the commercial sector.

Comment 3: Amendment 28 does not promote conservation as required by National Standard 4 and violates 303(a)(1)(A) of the Magnuson-Stevens Act by failing to protect, restore, and promote the long-term health of the fishery because it will reduce the spawning potential ratio (SPR) for the eastern portion of red snapper stock.

Response: NMFS disagrees. Although under the new allocation the projections indicate that the SPR would decline in the eastern Gulf portion of the red snapper stock, the SPR is also projected to decline in the eastern Gulf under the status quo allocation. Further, the projected decline from the shift in allocation is expected to be similar to the status quo because the proposed change in the allocation ratio is small (2.5 percent), which is less than 0.5 million lb (0.23 million kg), and the recreational ACT requires NMFS to project season lengths based on a catch target that is almost 1.5 million lb (0.68 million kg) less than the recreational quota.

The Council currently manages the Gulf red snapper stock as one Gulf-wide stock with a Gulf-wide status determination criteria and a Gulf-wide rebuilding plan. The Council selected the allocation alternative in Amendment 28 instead of the greater shift in allocation presented in another MRIP-based option (Alternative 9) in part to avoid higher declines in SPR for the eastern Gulf. Any decrease in the SPR in the eastern Gulf is expected to be offset by a larger increase of SPR in the western Gulf, which results in a Gulf-wide recovery of red snapper under the rebuilding plan. Further, the resulting commercial and recreational quotas keep the harvest under the overfishing limit, and new accountability measures that have been implemented for the recreational sector are constraining harvest to the recreational quota. Thus, the amendment does promote conservation.

The commenter also stated the SPR projections included in Amendment 28 are not based on rational assumptions related to selectivity and discard mortality. Specifically, the commenter asserted that the projections assumed that selectivity would remain unchanged until 2032, which is unrealistic, and there would be a 10 percent discard mortality rate, which is based on the use of a venting tool that is no longer required as of August 2013 (78 FR 46820, August 2, 2013). The commenter stated a 21 percent discard mortality rate should be applied to any stock projections and to support this comment included analyses conducted by a consulting firm. These analyses, which were only provided to the NMFS in February 2016, have not been presented to the Council's Scientific and Statistical Committee (SSC) or the Council. Further, these analyses do not present any information that indicates that the selectivity will change or that the removal of the venting tool requirement will necessarily result in a substantially higher discard mortality rate. With respect to release mortality, the analyses recognize that the venting tool requirement was removed to allow fishermen the ability to choose methods or tools appropriate for their situation when releasing reef fish. The venting tool requirement was removed based on the advice from the Council's SSC, which concluded that although some information shows that venting tools are helpful to reducing barotrauma, the use of descent devices may be preferable to venting in some situations, there is evidence that some fishermen use improper methods to vent fish, and there are situations such as fishing in shallow waters when neither venting nor decent devices are needed. Further, NMFS, Sea Grant, and state marine resource agencies promote educational and outreach activities encouraging fishermen to use venting tools and decent devices. Circle hook and dehooking device regulations to minimize bycatch and bycatch mortality that were put in place with the venting tool requirement also remain in place. The foregoing explains the rational basis for the Council's decision to rely on the projections provided by the Southeast Fisheries Science Center (SEFSC).

Comment 4: Amendment 28 violates 303(a)(1)(A) of the Magnuson-Stevens Act by creating instability in the commercial sector.

Response: NMFS disagrees that Amendment 28 will create instability in the commercial sector. In terms of season length, ex-vessel prices, no quota overages, enhanced safety at sea, and absence of other race to fish (derby) conditions, stability in the commercial sector, which operates under an IFQ program, would remain unaffected by the reallocation in this final rule. The commercial red snapper sector was stable when the commercial quota was as low as 3.315 million lb (1.504 million kg) in 2007 when the IFQ program was established, and would be expected to remain stable at the 2016 and 2017 quota levels that are more than twice the 2007 quota. Even with possible future commercial quota reductions, the type of stability described above would still occur.

Although the lessened allocation ratio for the commercial sector would reduce the availability of IFQ allocations, which in turn could put upward pressure on allocation prices, this condition is more likely to arise with larger changes to the allocation ratio than the minimal one selected in Amendment 28. This could be challenging to buyers of IFQ allocations, such as small IFQ shareholders and more recent entrants, and, the lessened allocation ratio could disrupt the stable planning horizon of commercial fishermen as they may need to re-scale their operations due to lower than expected IFQ allocations, although the scale of these effects under Amendment 28 would be minimal. Further, this sort of instability may be expected to diminish over time as fishermen adjust to the new allocation ratio. Nevertheless, it is likely that the commercial sector's dissatisfaction with the allocation change would persist for some time.

Comment 5: Amendment 28 violates the Council's allocation policy because the reallocation is not connected to the achievement of optimum yield (OY), frustrates the FMP objective of rebuilding the stock because of declines in SPR in the eastern Gulf, does not promote a rational or easily managed use of the resource, will not increase efficiency or benefit the recreational sector, and will not provide for the sustained participation of fishing communities in the eastern Gulf.

Response: NMFS disagrees that the reallocation is not consistent with the Council's allocation policy. Although this final rule redistributes quota from the commercial sector, which has little management uncertainty, to the recreational sector, which has greater management uncertainty, that is currently addressed by using a 20 percent buffer between the recreational ACL and ACT. The use of an ACT is not inconsistent with the requirement under National Standard 1 to achieve OY on a continuing basis. The ACT is the amount of annual catch that is intended to control actual catch at or below the ACL, 50 CFR 600.310(f)(2)(v), while OY is "a long-term average amount of desired yield from a stock." 50 CFR 600.310(e)(3)(ii). The National Standard Guidelines explain the use of the phrase "achieving, on a continuing basis, the optimum yield from each fishery" in National Standard 1 in that context. 50 CFR 600.310(e)(3)(i)(B). For the recreational sector, the ACT is intended to help achieve OY by ensuring that overfishing does not occur and the red snapper stock continues to rebuild, consistent with § 600.310(3)(3)(i)(B).

The reallocation in this final rule does not conflict with the FMP objective to rebuild the red snapper stock throughout the Gulf. As discussed above, Gulf red snapper is managed as one Gulf-wide stock. This stock has Gulf-wide status determination criteria and is managed to achieve a Gulf-wide rebuilding plan. Although the stock condition is not uniform over the entire management unit, the stock is not undergoing overfishing and is rebuilding as scheduled under the rebuilding plan.

Amendment 28 addresses the results of changes in the methodology in collecting recreational landings information that indicate that recreational harvests have been underestimated, allowed for increases in the acceptable biological catch (ABC), and the implementation of higher quotas for both the recreational and commercial sectors. The reallocation in this final rule will promote a rational, more easily managed resource by reconciling new information that shows past recreational landings were underestimated with the fact that future recreational harvest will be monitored based on an improved methodology that recognizes more reliable higher landings estimates.

With respect to efficiency, the Council's allocation policy states that allocation shall consider efficient utilization of fishery resources, but should not just redistribute gains and burdens without an increase in efficiency. Amendment 28 contains a lengthy consideration of the issue of efficiency in the utilization of the red snapper resource, including an economic study conducted by the SEFSC, reviewed by the Council's Socioeconomic SSC and presented to the Council in October 2012, which concludes that the current allocation is inefficient. In developing Amendment 28, the Council did consider efficiency in evaluating the effects of reallocation but could not definitively conclude that it would increase or decrease efficiency in the utilization of the red snapper resource. Amendment 28 also notes that, in principle, benefits to the recreational sector would accrue from a quota increase as a result of the reallocation, because each additional fish made available for harvest by the sector has value to the sector. However, certain conditions, such as state red snapper regulations that are inconsistent with Federal regulations, would tend to limit the extent of such benefits for anglers in Federal waters.

Amendment 28 includes a description of several commercial and recreational fishing communities throughout the Gulf and an analysis of the social and economic effects on fishing communities in general. The nature of social and economic effects on these communities resulting from the decline in SPR in the eastern Gulf is discussed in more general terms as part of the effects analysis for each allocation alternative. Negative or positive social and economic effects on the commercial or recreational sector, as a whole, would imply similar directional effects on the sector's fishing communities and these effects would vary by area or by the degree of dependence on red snapper. The decline in SPR in the eastern Gulf is relatively small so as not to pose as a significant threat to the sustained participation of fishing communities in the red snapper segment of the reef fish fishery. Moreover, NMFS notes that negative effects experienced by those fishing for red snapper would be mitigated by the presence of other species important to the fishing communities.

Comment 6: Amendment 28 violates National Standard 2 because the recalibration methods used in the stock assessment were not based on the best scientific information available and state landings information was not referenced in the amendment.

Response: NMFS disagrees. The 2014 update red snapper stock assessment and a revision to that assessment were reviewed by the Council's SSC, and in both cases, the SSC determined that the assessments, both using the MRIP recalibrated landings data, were based on the best scientific information available, consistent with National Standard 2. In addition, the SEFSC reviewed Amendment 28 and in a memorandum dated October 9, 2015, certified the amendment is based on best scientific information available.

The comment also states that Amendment 28 did not reference state landings information that suggests MRIP has overestimated the recreational harvest. NMFS assumes the commenter is referring to recent state surveys run by Louisiana and Alabama, which are still in varying stages of review by independent consultants that must be completed before meaningful conclusions regarding the quality of their estimates relative to MRIP can be drawn. Until then, the state landings information is not considered to be the best scientific information available for use in management.

Comment 7: Amendment 28 violates the National Environmental Policy Act (NEPA). Amendment 28 does not meet the purpose and need of the amendment or explain why averages are used to calculate the percentage allocation. Amendment 28 also does not contain a reasonable range of alternatives because there are no alternatives allocating more fish to the commercial sector.

Response: NMFS disagrees that Amendment 28 violates NEPA. The reallocation selected by the Council addresses the purpose and need of Amendment 28, which is to reallocate the red snapper harvest consistent with the 2014 update assessment to ensure the allowable catch and recovery benefits are fairly and equitably allocated, and to base sector allocations on the best scientific information available while achieving OY and rebuilding the red snapper stock. As described Amendment 28, the change in allocation is based on the proportion of the increase in the ABC that results from the recalibration of MRIP catch estimates to the recreational sector, which is the best scientific information available as described in the response to Comment 6 on National Standard 2. Allocating this quantifiable increase in the ABC to the recreational sector is a straightforward way to reconcile new information that shows past recreational landings were underestimated. Future recreational harvest will be monitored based on an improved methodology that recognizes more reliable higher landings estimates. This shift in allocation is intended to help maintain a fair and equitable distribution of recovery benefits.

The rationale for using an average in the change of allocation over the years 2015 to 2017 is explained in Section 2.1 of Amendment 28. "For 2015 to 2017, the amounts of quota attributable to the MRIP recalibration were derived from projections provided by the SEFSC (Appendix H). Percentages of the red snapper quota allocated to each sector on an annual basis would fluctuate based on the quota and on the amounts attributed to the recalibration. However, for this action, the Council elected to base the commercial and recreational allocations on the average percentages of the red snapper quota that would be allocated to each sector between 2015 and 2017." Thus, the Council used averages to account for fluctuations in the projections.

Although the final version of Amendment 28 did not analyze alternatives that increase the commercial allocation, the Council did consider these alternatives in earlier drafts of the amendment. As explained in the response to comments on the draft EIS (final EIS Appendix D) for Amendment 28, when Amendment 28 was first developed as an options paper it included alternatives that would have shifted allocation from the recreational sector to the commercial sector. These alternatives were subsequently removed by the Council after review of an economic analysis conducted by the SEFSC that concluded that the red snapper allocation between sectors was not efficient and a marginal shift in allocation to the recreational sector would likely increase net benefits to the nation. In addition, the Council was concerned about the loss of fishing opportunities by the recreational sector. As described in the Notice of Intent, "After considering the economic analyses conducted by NMFS, the loss of fishing opportunities by the recreational sector due to shorter fishing seasons, and public comments provided at Council meetings, the Council concluded that increasing the allocation of red snapper to the commercial sector would not meet the purpose and need of Amendment 28." (78 FR 66900, November 7, 2013*)*.

Based on the best scientific information available, the Council determined that it was appropriate to modify the purpose and need statement of the amendment to focus on reallocating the red snapper harvest consistent with the red snapper assessment update, to ensure the allowable catch and recovery benefits are fairly and equitably allocated between the commercial and recreational sectors. When the draft EIS was published for comment, it included this revised purpose and need statement and two new alternatives added by the Council to address the new information and the revised purpose and need. The draft EIS for Amendment 28 did not include alternatives that would increase the commercial sector's allocation because the new scientific information did not change any previous understanding of commercial landings. NMFS explained this in its response to comments on the draft EIS, and included in that discussion an analysis of the environmental consequences of increasing the commercial allocation, as noted in its Record of Decision.

Comment 8: Amendment 28 violates NEPA because there is insufficient analysis of effects; specifically, there was insufficient analysis of the projected decline in SPR for the eastern component of the stock, the impacts analysis "assum[es] a stable or increasing quota" when the quota will be decreasing through 2032, there are outdated passages that refer to gains in net economic benefits resulting from allocation, and the analysis does not address the provision in the Congressional Omnibus Appropriations Bill signed into law on December 18, 2015.

Response: Amendment 28 contains a sufficient effects analysis. Amendment 28 contains a thorough analysis of the effects of the alternatives considered in the final EIS. With respect to the projected decline in SPR for the eastern component of the stock, as previously discussed in NMFS's responses to Comments 2 and 3, the Council manages red snapper Gulf-wide to meet a Gulf-wide rebuilding target and time frame. Further, the effects of the declining stock status in the eastern Gulf were considered in evaluating the stock in both SEDAR 31 and the 2014 update assessment and were the basis of setting the 2015 to 2017 ABCs by the SSC. The results of the next assessment will be provided to the Council to determine if further regulatory changes are warranted.

The discussion of the social effects of Amendment 28 largely focused on impacts "assuming a stable or increasing quota." However, the discussion also acknowledged that "it is possible the quota may decrease in future years, for example, if recruitment declines," and describes how problems associated with the commercial sector's loss of access to red snapper from reallocation under Alternatives 2–7 in Amendment 28 would be compounded should the quota decline in response to a declining ABC.

The references to gains in net economic benefits resulting from allocation are retained in Amendment 28 because they remain relevant for the assessment of allocation alternatives. They present the type of economic analysis that needs to be conducted when assessing the economic implications of allocation measures. The analysis that estimated marginal valuation (*i.e.*, economic value of a fish) in the commercial and recreational sectors remains valid both in terms of approach and results. However, as explained in Amendment 28, the use of the equimarginal principle, which means comparing the marginal values of the commercial and recreational sectors to determine the level of allocation to each sector that result in the greatest net economic benefits, is no longer valid. This is because the recreational sector's open access system is not conducive to an efficient allocation within the sector, making it impossible to provide policy-relevant rankings of the reallocation alternatives in the amendment based on the expected net benefits to the nation.

The impact of the provision in the Congressional Omnibus Appropriations Bill signed into law on December 18, 2015, that affects the management of the Reef Fish FMP for fiscal year 2016 was not addressed in Amendment 28 because the bill became law after the Council submitted the amendment to NMFS for review. Further, this legislation has no direct bearing on the allocation decision. Although this legislation may increase the uncertainty in the recreational season length projections, the recreational and component ACTs will help ensure that the recreational ACL is not exceeded and NMFS will consider this additional uncertainty when determining the appropriate closure date.

Comment 9: Amendment 28 suffers from procedural defects and Amendment 28 should not be approved.

Response: There are no procedural defects that would require disapproval of the FMP or final rule. The comment incorrectly identifies the date that the Council submitted the amendment to NMFS for preliminary review as the transmittal date referred to in Section 304(a) of the Magnuson-Stevens Act. The transmittal date was December 18, 2015, and the notice of availability for Amendment 28 published on December 24, 2015 (80 FR 80310). This is generally consistent with the requirement in Section 304(a) that a notice of availability be published on or before the 5th day after the day the Council transmits a plan amendment to the Secretary. With respect to changes made to the document after the Council took final action, at its August 2015 meeting, the Council expressly authorized staff to make any required editorial changes to the amendment. Any changes subsequently made to Amendment 28 were consistent with this authority.

The comment also states that it was improper for the Council to take final action on Amendment 28 prior to the release of the final 2014 update stock assessment report. Although the written report of the update assessment was not available until September 2015, which is after the Council took final action on Amendment 28 in August 2015, that report merely formalizes the information that was previously presented to the Council, the SSC, and the public. That draft assessment report was also used by the Council to increase the red snapper sector quotas in the spring of 2015. The public had an opportunity to comment on the assessment results both during the Council webinar and during the comment period on the proposed rule to implement the quota increase that was published in April 2015 (80 FR 17380, April 1, 2015). The amount of increase in the total allowable harvest attributable to the MRIP recalibration was derived from projections provided by the SEFSC in March 2015 and that analysis is included in Appendix H to Amendment 28.

The comment states that the Fishery Impact Statement (FIS) for Amendment 28 is incomplete because it does not contain a discussion of the action's impact on SPR and stock abundance in the eastern Gulf. However, the FIS incorporates, by reference, the more detailed discussion of the expected effects provided in Chapter 4 of Amendment 28, and Section 4.1.2 of that Chapter addresses this issue.

Comment 10: Amendment 28 is not intended to, nor does it fix any purported errors in landings history over the base years used to establish the 51 percent commercial and 49 percent recreational initial allocation.

Response: Amendment 28 is not an attempt to fix the estimates used to establish the initial allocation and is not based on past red snapper harvest history. Amendment 28 and the reallocation in this final rule are based on new scientific information that indicates that recreational landings are greater than previously estimated. These revised historical recreational landings were then used in the 2014 update assessment and had a quantifiable impact on the results of that assessment. Allocating this quantifiable increase in the ABC to the recreational sector is a straightforward way to reconcile new information that shows that past recreational landings were underestimated.

Comment 11: The recreational sector should have received a greater increase in allocation than the preferred alternative selected by the Council.

Response: The Council evaluated several different alternatives that would increase the recreational sector's red snapper allocation during the development of Amendment 28. These alternatives included straightforward percentage changes, changes based on the red snapper stock ACL, and changes based on the new recreational catch information used in the 2014 update assessment. As explained in the responses to Comments 2 and 7, the Council determined, and NMFS agrees, that the allocation selected both meets the purpose and need of Amendment 28, and is fair and equitable because it addresses changes in the methodology in collecting recreational landings information that indicate recreational harvests have been underestimated.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined that this final rule is necessary for the conservation and management of Gulf red snapper and is consistent with Amendment 28, the FMP, the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

In compliance with section 604 of the RFA, NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) for this final rule. The FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant economic issues raised by public comment, NMFS' responses to those comments, and a summary of the analyses completed to support the action. The FRFA follows.

The preamble to the final rule provides the statement of the need for and objectives of this final rule. The Magnuson-Stevens Act provides the statutory basis for this final rule.

No duplicative, overlapping, or conflicting Federal rules have been identified. Moreover, this final rule is not expected to change current reporting, record-keeping, and other compliance requirements on directly affected small entities.

No comments specific to the IRFA were received from the public or from Chief Counsel for the Advocacy of the Small Business Administration and, therefore, no public comments are addressed in this FRFA. Certain comments with socio-economic implications are addressed in the comments and responses section in the responses to comments 2, 4, 5, and 7. No changes to the proposed rule were made in response to such comments.

NMFS agrees that the Council's choice of preferred alternative will best achieve the Council's objectives for Amendment 28 while minimizing, to the extent practicable, the adverse effects on fishers, support industries, and associated communities.

NMFS expects this final rule to directly affect federally permitted commercial reef fish fishermen that harvest red snapper in the Gulf. Changes to the recreational red snapper ACL/ACT due to the reallocation will not directly apply to or regulate charter vessel and headboat (for-hire) businesses. Any impact to the profitability or competitiveness of for-hire fishing businesses will be the result of changes in for-hire angler demand and will therefore be indirect in nature. Although anglers will be directly affected by this final rule, the RFA does not consider them as small entities. NMFS has not identified any other small entities that will be directly affected by this rule.

Commercial harvest of red snapper in the Gulf is currently managed under an IFQ program. From 2010 through 2014, an annual average of 375 vessels landed at least 1 lb (0.45 kg) of red snapper. Each vessel generated annual average dockside revenues of approximately $102,000 (2014 dollars), of which $36,000 were from red snapper, $38,000 from other species jointly landed with red snapper, and $28,000 from other species on trips without red snapper. Vessels that caught and landed red snapper may also operate in other fisheries, the revenues of which are not known and are not reflected in these totals.

The Small Business Administration has established size criteria for all major industry sectors in the U.S., including fish harvesters. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $20.5 million (North American Industry Classification System, NAICS code 114111, finfish fishing) for all its affiliated operations worldwide.

Based on revenue information, all 375 commercial vessels directly affected by this final rule may be assumed to be small entities. Thus, the final rule will affect a substantial number of small entities. Because all entities expected to be directly affected by the final rule are determined for the purpose of this analysis to be small business entities, the issue of disproportional effects on large and small entities does not arise in the present case.

The final rule will change the commercial and recreational sector allocation of the red snapper quota from 51 percent for the commercial sector and 49 percent for the recreational sector to 48.5 percent and 51.5 percent for the commercial and recreational sectors, respectively. The total ACL will be 13.960 million lb (6.33 million kg) for 2016 and 13.740 million lb (6.23 million kg) for 2017. Under the current allocation, the commercial sector's ACL would be 7.120 million lb (3.22 million kg) for 2016 and 7.007 million lb (3.17 million kg) for 2017. Relative to these commercial ACLs, the reallocation will reduce the commercial sector allocation by 0.352 million lb (0.160 million kg) in 2016 and 0.343 million lb (0.156 million kg) in 2017, or a total of 0.695 million lb (0.315 million kg) over 2 years. Based on 2013 median ex-vessel price per pound for red snapper of $4.83 when adjusted to 2014 prices ($4.75 at 2013 dollars), these commercial quota reductions will be expected to reduce total gross revenue (ex-vessel revenue, minus the IFQ program's 3 percent cost recovery fee) of vessels that commercially harvest red snapper by approximately $1.48 million (2014 dollars) in 2016 and $1.45 million in 2017 for all vessels. Over 2 years, total revenue reductions will be $2.93 million, or an average of $1.46 million per year for all vessels. This average revenue reduction may be considered to approximate the annual revenue reduction of directly affected commercial vessels over a number of years for which the red snapper commercial quota is held at about the same levels as in 2016 and 2017. Based on the 2010–2014 average of 375 vessels that commercially harvested red snapper, the revenue reduction per vessel will be approximately $3,893 annually. This amount is approximately 4 percent of total per vessel revenues from all species.

The following discussion describes the eight alternatives that were not selected as preferred in Amendment 28 by the Council.

The first alternative, the no action alternative, would maintain the current commercial and recreational allocation of the red snapper ACL. This alternative would maintain relatively the same economic benefits to commercial vessels but at levels higher than those afforded by the preferred alternative. The second alternative would increase the recreational sector's allocation by 3 percent, resulting in a 48 percent commercial and 52 percent recreational sector allocation. The third alternative would increase the recreational sector's allocation by 5 percent, resulting in a 46 percent commercial and 54 percent recreational sector allocation. The fourth alternative would increase the recreational sector's allocation by 10 percent, resulting in a 41 percent commercial and 59 percent recreational sector allocation. The fifth alternative would allocate to the recreational sector 75 percent of the red snapper ACL increases beyond 9.12 million lb (4.14 million kg), resulting in a 42 percent commercial and 58 percent recreational sector allocation in 2016 and 42.3 percent commercial and 57.7 percent recreational sector allocation in 2017. The sixth alternative would allocate to the recreational sector all red snapper ACL increases beyond a stock ACL of 9.12 million lb (4.14 million kg), resulting in a 33.3 percent commercial and 66.7 percent recreational sector allocation in 2016 and 33.9 percent commercial and 66.1 percent recreational sector allocation in 2017. The seventh alternative would allocate to the recreational sector 75 percent of any red snapper ACL increases beyond a stock ACL 10.0 million lb (4.54 million kg), resulting in a 43.6 percent commercial and 56.4 percent recreational sector allocation in 2016 and 43.9 percent commercial and 56.1 percent recreational sector allocation in 2017. The eighth alternative (Alternative 9 in Action 1) would allocate increases in the red snapper ACL due to the recalibration of MRIP catch estimates and to the change in size selectivity to the recreational sector, resulting in a 42.5 percent commercial and 57.5 percent recreational sector allocation in 2016 and 2017. All these other alternatives, except the no action alternative, would result in larger quota (ACL) and revenue reductions for the commercial vessels that harvest red snapper. The no action alternative was not selected because it would not meet the purpose and need of the amendment.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as small entity compliance guides. As part of the rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all interested parties.

List of Subjects in 50 CFR Part 622

Allocation, Commercial, Fisheries, Fishing, Gulf, Recreational, Red snapper.

Dated: April 21, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 622.39, revise paragraphs (a)(1)(i) and (a)(2)(i) to read as follows:

§ 622.39 Quotas.

* * * * *

(a) * * *

(1) * * *

(i) *Commercial quota for red snapper.* (A) For fishing year 2015—7.293 million lb (3.308 million kg), round weight.

(B) For fishing year 2016—6.768 million lb (3.070 million kg), round weight.

(C) For fishing year 2017 and subsequent fishing years—6.664 million lb (3.023 million kg), round weight.

* * * * *

(2) * * *

(i) *Recreational quota for red snapper*—(A) *Total recreational quota (Federal charter vessel/headboat and private angling component quotas combined)*—(*1*) For fishing year 2015—7.007 million lb (3.178 million kg), round weight.

(*2*) For fishing year 2016—7.192 million lb (3.262 million kg), round weight.

(*3*) For fishing year 2017 and subsequent fishing years—7.076 million lb (3.210 million kg), round weight.

(B) *Federal charter vessel/headboat component quota.* The Federal charter vessel/headboat component quota applies to vessels that have been issued a valid Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. This component quota is effective for only the 2015, 2016, and 2017 fishing years. For the 2018 and subsequent fishing years, the applicable total recreational quota specified in § 622.39(a)(2)(i)(A) will apply to the recreational sector.

(*1*) For fishing year 2015—2.964 million lb (1.344 million kg), round weight.

(*2*) For fishing year 2016—3.042 million lb (1.380 million kg), round weight.

(*3*) For fishing year 2017—2.993 million lb (1.358 million kg), round weight.

(C) *Private angling component quota.* The private angling component quota applies to vessels that fish under the bag limit and have not been issued a Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. This component quota is effective for only the 2015, 2016, and 2017 fishing years. For the 2018 and subsequent fishing years, the applicable total recreational quota specified in § 622.39(a)(2)(i)(A) will apply to the recreational sector.

(*1*) For fishing year 2015—4.043 million lb (1.834 million kg), round weight.

(*2*) For fishing year 2016—4.150 million lb (1.882 million kg), round weight.

(*3*) For fishing year 2017—4.083 million lb (1.852 million kg), round weight.

* * * * *

■ 3. In § 622.41, revise (q)(2)(iii) to read as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(q) * * *

(2) * * *

(iii) *Recreational ACT for red snapper*—(A) *Total recreational ACT (Federal charter vessel/headboat and private angling component ACTs combined)*—(*1*) For fishing year 2015—5.606 million lb (2.543 million kg), round weight.

(*2*) For fishing year 2016—5.754 million lb (2.610 million kg), round weight.

(*3*) For fishing year 2017 and subsequent fishing years—5.661 million lb (2.568 million kg), round weight.

(B) *Federal charter vessel/headboat component ACT.* The Federal charter vessel/headboat component ACT applies to vessels that have been issued a valid Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. This component ACT is effective for only the 2015, 2016, and 2017 fishing years. For the 2018 and subsequent fishing years, the applicable total recreational quota specified in § 622.39(a)(2)(i)(A) will apply to the recreational sector.

(*1*) For fishing year 2015—2.371 million lb (1.075 million kg), round weight.

(*2*) For fishing year 2016—2.434 million lb (1.104 million kg), round weight.

(*3*) For fishing year 2017—2.395 million lb (1.086 million kg), round weight.

(C) *Private angling component ACT.* The private angling component ACT applies to vessels that fish under the bag limit and have not been issued a Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. This component ACT is effective for only the 2015, 2016, and 2017 fishing years. For the 2018 and subsequent fishing years, the applicable total recreational quota specified in § 622.39(a)(2)(i)(A) will apply to the recreational sector.

(*1*) For fishing year 2015—3.234 million lb (1.467 million kg), round weight.

(*2*) For fishing year 2016—3.320 million lb (1.506 million kg), round weight.

(*3*) For fishing year 2017—3.266 million lb (1.481 million kg), round weight.

[FR Doc. 2016–09892 Filed 4–27–16; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 140818679–5356–02]

RIN 0648–XE575

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; 2016 Recreational Fishing Seasons for Red Snapper in the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closures.

SUMMARY: NMFS announces the 2016 recreational fishing seasons for the private angling and Federal charter vessel/headboat (for-hire) components for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf) through this temporary rule. The Federal recreational seasons for red snapper in the Gulf EEZ begin at 12:01 a.m., local time, on June 1, 2016. For recreational harvest by the private angling component, the season closes at 12:01 a.m., local time, on June 10, 2016. For recreational harvest by the Federal for-hire component, the season closes at 12:01 a.m., local time, on July 17, 2016. These closures are necessary to prevent the private angling and Federal for-hire components from exceeding their respective quotas (annual catch limits (ACLs)) for the fishing year and prevent overfishing of the Gulf red snapper resource.

DATES: The closure is effective at 12:01 a.m., local time, June 10, 2016, until 12:01 a.m., local time, January 1, 2017, for the private angling component. The closure is effective at 12:01 a.m., local time, July 17, 2016, until 12:01 a.m., local time, January 1, 2017, for the Federal for-hire component. The 2017 Federal recreational fishing seasons for the respective components begin on June 1, 2017.

FOR FURTHER INFORMATION CONTACT: Peter Hood, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *peter.hood@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery, which includes red snapper, is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The final rule implementing Amendment 40 to the FMP established two components within the recreational sector fishing for Gulf red snapper, the private angling component and the Federal for-hire component (80 FR 22422, April 22, 2015). Amendment 40 also allocated the red snapper recreational ACL and annual catch target (ACT) between the components, and established separate seasonal closures for the two components. The seasonal closures are projected from the component ACTs (set 20 percent less than the component ACLs) to reduce the likelihood of harvests exceeding the component ACLs and total recreational ACL. Published in the same issue of the **Federal Register** is the final rule for Amendment 28 to the FMP to implement revised ACLs for the commercial sector and revised ACLs and ACTs for the private angling and Federal for-hire components of the recreational sector for 2016 and 2017. For 2016, the Amendment 28 final rule set the private angling ACL at 4.150 million lb (1.882 million kg), round weight, and ACT at 3.320 million lb (1.506 million kg), round weight. The ACL and ACT for the Federal for-hire component in 2016 are 3.042 and 2.434 million lb (1.380 and 1.104 million kg), round weight, respectively.

To project the 2016 recreational red snapper seasons for the private angling and Federal for-hire components, a tiered projection approach was taken for forecasting Gulf recreational red snapper average weight and catch rates for 2016. To account for Gulf state recreational red snapper seasons in 2016 that are inconsistent with Federal recreational seasons, state average weights and daily catch rates for 2016 were based on observed values from the 2014 and 2015 seasons. Ten projection scenarios were developed for determining Federal season lengths for the private angler component and Federal for-hire component; five projection scenarios were based on recent years' data and five were based on regression methods using year, year of rebuilding, spawning stock biomass, fuel prices, per capita gross domestic product, and state and Federal season lengths as predictive covariates. As a result of the assumed inconsistent recreational season lengths for Gulf states in 2016, NMFS projects that landings from recreational harvest in state waters will be approximately half of the 2016 private angler component ACT. The results from the ten projection scenarios as well as additional details about the calculation of the 2016 projections can be viewed in a report located at *http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/red_snapper/index.html*.

Based upon the mean of projection scenarios using 2014 and 2015 observed catch rates and mean weights, NMFS determines that the season for the private angling component will be 9 days and the season for the Federal for-hire component will be 46 days. Therefore, the Federal season for the private angling component will begin at 12:01 a.m., local time, June 1, 2016, and close at 12:01 a.m., local time, June 10, 2016. The Federal season for the Federal for-hire component will begin at 12:01 a.m., local time, June 1, 2016, and close at 12:01 a.m., local time, July 17, 2016. The 2017 Federal recreational fishing seasons for the respective components begin on June 1, 2017.

On and after the effective date of a recreational component closure, the bag and possession limits for red snapper in the respective component are zero. When the Federal charter vessel/headboat component or entire recreational sector is closed, these bag and possession limits apply in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for Gulf reef fish has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

Classification

The Regional Administrator for the NMFS Southeast Region has determined this temporary rule is necessary for the conservation and management of Gulf red snapper and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.41(q)(2)(i) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA), finds that the need to immediately implement this action to close the private angling and Federal for-hire components for the red snapper recreational sector constitute good cause to waive the requirements to provide prior notice and opportunity for public comment on this temporary rule pursuant to the authority set forth in 5 U.S.C. 553(b)(B), because such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule implementing the recreational red snapper ACLs and ACTs, and the rule implementing the requirement to close the recreational components when the ACTs are projected to be reached have already been subject to notice and comment, and all that remains is to notify the public of the closures. Providing prior notice and opportunity for public comment are contrary to the public interest because of the need to immediately implement this action to protect Gulf red snapper. Prior notice and opportunity for public comment would require time and many of those affected by the length of the recreational fishing seasons, particularly charter vessel and headboat operations that book trips for clients in advance, need as much advance notice as NMFS is able to provide to adjust their business plans to account for the recreational fishing seasons.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 22, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–09907 Filed 4–27–16; 8:45 am]

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